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PAPERS

RELATING TO

THE TREATY OF WASHINGTON.

VOLUME VI.—WASHINGTON ARBITRATION AND GENERAL APPENDIX.

CONTAINING THE REPORT OF ROBERT S. HALE, AGENT AND COUNSEL OF
THE UNITED STATES BEFORE THE COMMISSION ON CLAIMS OF CITIZENS
OF THE UNITED STATES AGAINST GREAT BRITAIN, AND OF SUB-
JECTS OF HER BRITANNIC MAJESTY AGAINST THE UNITED
STATES, UNDER THE TWELFTH ARTICLE OF THE TREATY
OF MAY 8, 1871, BETWEEN THE UNITED STATES
AND GREAT BRITAIN; AND GENERAL APPEN-
DIX TO PAPERS RELATING TO THE
TREATY OF WASHINGTON.



WASHINGTON:
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1874.

REPORT
OF
ROBERT S. HALE, Esq.,
AGENT AND COUNSEL OF
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STATES AND GREAT BRITAIN.

LETTER OF MR. HALE TO THE SECRETARY OF STATE.

OFFICE OF THE AGENT OF THE
UNITED STATES BEFORE THE MIXED COMMISSION
ON AMERICAN AND BRITISH CLAIMS,
Washington, D. C., November 30, 1873.

SIR: In submitting the accompanying report of the proceedings and results of the mixed commission under the twelfth article of the treaty between the United States and Great Britain of May 8, 1871, I beg to express my profound sense of obligation to yourself for the uniform kindness and consideration I have experienced from you during the whole existence of the commission.

The two years and more of my connection with the commission were years of severe and unrelenting labor. The nearly five hundred claims presented to and passed on by the commission involved an immense range of investigation, proofs, and arguments. The transactions out of which they grew extended through four years of time, and involved not only inquiries into the whole history of the late war in its operations on land, but also a large extent of maritime operations, warlike and commercial, and extensive inquiries into the transactions between the late so-called Confederate States and subjects of the neutral nations of Europe.

The proofs on the part of the claimants and of the defence, respectively, were sought through the archives of all the Departments of our own Government, as well as those of the late confederate government in our hands. Testimony of witnesses was taken on notice, and either on written interrogatories or on oral examinations by counsel attending in person, in almost every State and Territory of the United States, in all the British provinces of North America, in Mexico, in several of the West India Islands, in England, Scotland, and Ireland, and in Egypt. This testimony was taken, in all the cases of British claims against the United States, either by special counsel sent under my instructions from Washington, or by local counsel employed in the vicinity where testimony was to be taken. In each of these cases counsel acted under written instructions from myself, as full and specific as a careful examination of each case could enable me to give.

The few cases of American claims against Great Britain were managed in regard to testimony and arguments, by the private counsel of the claimants, I rendering only a general aid and supervision, but not assuming the responsibility either of taking the proofs or preparing the arguments.

But in the claims of British subjects against the United States, involving about 90 per cent. in amount of the entire claims before the commission, the sole control and responsibility rested upon me.

These claims involved about \$96,000,000, ranging through an almost infinite variety of facts and circumstances involved in the support of or defence against the claims. The claim as presented by the claimant in his memorial and proofs often gave the first and only information to the Government of the existence even of the claim, and involved an inquiry into the facts of the case through very circuitous and difficult channels. In such cases the Government always stands at a great disadvantage as against private claimants, who have full knowledge of all the circumstances of their own claims, when actual and *bona fide*, and of the proofs by which they may be established, and who, in the case of fraudulent, simulated, or excessive claims, have facilities in the manufacture of evidence often very difficult to be exposed or rebutted by the agents charged with the defence of the Government, and acting through secondary agents often at remote and almost inaccessible points.

In view of the number and amount of the claims presented, and the importance of the questions to be determined, the time limited by the treaty for their examination and decision was very short. Two years for the complete examination, trial, and decision of all these cases, nine months of which time was allowed (six absolutely, and three under limitation) for the presentation of the claims by the claimant, constituted a shorter time than should have been taken for the thorough and satisfactory examination of all the cases.

The fact that in this scanty time the Government was enabled to make the examination and trial of the cases as thorough as it was made, and to arrive at results so satisfactory, is certainly a subject of congratulation, the awards made by the commission against the United States amounting to only about two per cent. of the claims presented to the commission against them.

The entire expense of the commission incurred by the United States, including compensation of commissioners and officers of the commission, of the agent and counsel before the commission and his assistants and clerks, of counsel, agents, commissioners, witnesses, &c., in taking testimony, and also printing and incidental expenses, has been about \$300,000, of which amount about \$50,000 will be re-imbursed by the deduction from the amount of the awards, pursuant to article XVI of the treaty. All the memorials, evidence, and arguments were printed for the use of the commission, the expense of printing being borne jointly and equally by the two governments. The entire printed matter thus submitted, and now collated and bound, makes up seventy-four octavo volumes, averaging about 800 pages each.

In an early case before the commission, involving the question of the effect of domicile within the United States upon subjects of Great Britain, by paramount allegiance, domiciled within the United States,

Hon. Ebenezer Rockwood Hoar, of Massachusetts, was retained by the Government at my request as associate counsel, and filed a very learned and valuable argument. In a few other cases, not exceeding fifty in all, I was assisted in the preparation of arguments by Gen. Benjamin S. Roberts and by Messrs. Edwin L. Stanton and A. S. Worthington, of Washington, whose services were faithfully rendered and were very valuable. With these exceptions the arguments in all the British cases were prepared solely by myself.

In the taking of testimony a large number of counsel and agents were employed, under my supervision, in the localities where testimony was taken as above related. Among those who have rendered faithful and efficient service in this way, I deem it not invidious to mention Messrs. Kortrecht, Craft & Scales, of Memphis, Tenn.; Messrs. M. A. Dooley and William G. Hale, of New Orleans, La.; Franklin H. Churchill, esq., of New York City; Hon. D. H. Chamberlain, of Columbia, S. C.; Marcus Doherty, esq., of Montreal, P. Q., Canada; Hon. Andrew Sloan, of Savannah, Ga.; Horatio D. Wood, esq., of Saint Louis, Mo.; Frederick C. Hale, esq., of Chicago, Ill.; Messrs. Speed & Buckner, of Louisville, Ky.; Messrs. Bradley & Peabody, of Nashville, Tenn.; and General H. B. Titus, of Washington, D. C.

Thomas H. Dudley, esq., late consul of the United States, at Liverpool, and Joseph Nunn, esq., United States vice consul-general at London, also contributed largely, by their knowledge of the different cases, and their diligence and assiduity in inquiry and report upon the claims, to the successful defense of the United States against many of the prize cases.

In this connection, too, I should not fail to make mention of the diligence, skill, and assiduity of Mr. Edward Hayes, my stenographic clerk, during the whole period of my agency.

In conclusion, I cannot forbear the expression of my great satisfaction with the working of the commission, its performance of its arduous duties, and the result of its labors. The thanks of both governments will undoubtedly be fully expressed to the individual commissioners.

My personal acknowledgments are especially due to his excellency Count Corti, the presiding commissioner, for the marked and unfailing courtesy, kindness, and consideration which I, in common with every other person connected with the commission, received from him throughout the whole period of our official intercourse. The wide knowledge of public law, the sterling good sense and judgment in its application to the facts of individual cases, the untiring labor bestowed in the investigation alike of facts and principles, and the able, diligent, and conscientious application of his powers, attainments, and labors to the examination and decision of the cases before the commission, merit recognition and acknowledgment from the governments so largely indebted to him for the satisfactory disposition of the numerous vexed questions between

them submitted to the arbitrament of himself and his colleagues, to an extent to which these expressions of mine do scant and feeble justice.

Mr. Justice Frazer, the commissioner named by the President of the United States, by his ability, impartiality, urbanity, and diligence, fully justified the wisdom of the President's selection and the expectations of those previously acquainted with his judicial abilities and career.

I beg, also, to express my profound appreciation of the diligence, faithfulness, and ability exhibited by Mr. Howard, Her Majesty's agent, and by Mr. Carlisle, Her Majesty's counsel, in the management of the cases before the commission on behalf of the British government, and to acknowledge my personal obligations to each of those gentlemen for their unfailing courtesy and fairness.

I have the honor to be, very respectfully, your obedient servant,

ROB: S. HALE,

Agent of the United States, &c.

Hon. HAMILTON FISH,
Secretary of State.

REPORT.

To the Honorable Hamilton Fish, Secretary of State :

The undersigned, agent of the United States before the commission upon the claims of subjects of Her Britannic Majesty against the United States, and of citizens of the United States against Great Britain, established by the twelfth article of the treaty between the United States and Great Britain of 8th May, 1871, respectfully submits the following report of the proceedings and results of that commission :

Articles 12 to 17, inclusive, of the treaty above referred to, contain the provisions establishing the commission and regulating its jurisdiction, powers, and methods of proceeding. Those articles are found in the appendix to this report, A.

The Honorable James Somerville Frazer, of the State of Indiana, formerly a justice of the supreme court of that State, was named as commissioner by the President of the United States.

The Right Honorable Russell Gurney, member of Parliament, member of Her Majesty's privy council, and recorder of London, was named as commissioner by Her Britannic Majesty.

Count Louis Corti, envoy extraordinary and minister plenipotentiary to the United States of His Majesty the King of Italy, was named as the third commissioner by the President of the United States and Her Britannic Majesty conjointly.

Robert Safford Hale, esq., of the State of New York, was named by the President of the United States agent of the United States to attend the commissioners, to present and support claims presented on behalf of his Government, to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision of such claims, pursuant to the provisions of the thirteenth article of the treaty. Mr. Hale acted also as counsel for the United States under the same article.

Henry Howard, esq., one of Her Britannic Majesty's secretaries of legation at Washington, was named by Her Majesty's government as the agent of that government for the like purposes, pursuant to the same article.

James Mandeville Carlisle, esq., of the city of Washington, U. S. A., was employed as the counsel of Her Britannic Majesty's government before the commission.

The commissioners and agents and counsel above named continued in the execution of their respective duties to the close of the commission.

The commission first met and organized at Washington on the 26th day of September, 1871, each of the commissioners making and subscribing the "solemn declaration" provided by the twelfth article of the treaty.

Count Corti was requested, by vote of the commission, to preside during its deliberations, and continued to act as presiding commissioner during the entire existence of the commission.

Thomas Campbell Cox, esq., of the District of Columbia, U. S. A., was duly appointed by the commission as its secretary, and continued to act as such to the close of the commission.

The commission, at an early session, adopted rules for the course of proceedings before it, including the manner of presentation, prosecution, and defense of claims, the taking of testimony, and the printing and presentation of the evidence and arguments, a copy of which rules, with such slight modifications as were from time to time afterward adopted, is found in the appendix, B.

Within the time limited by the treaty, nineteen claims were presented on the part of citizens of the United States against Great Britain, aggregating, exclusive of interest, a little less than \$1,000,000. These claims, as will be seen by the detailed report hereinafter given, were all disallowed by the commission.

Within the same time were presented four hundred and seventy-eight claims of subjects of Her Britannic Majesty against the United States, aggregating, exclusive of interest, about \$60,000,000, and, including interest for the average time allowed by the commission, about \$96,000,000. Of these claims, one was dismissed by the commission on account of indecorous and improper language used in the memorial, without prejudice to the filing of a new memorial, which was subsequently filed; thirty were dismissed as not within the jurisdiction of the commission; two hundred and fifty-eight were disallowed on the merits; eight were withdrawn by Her Britannic Majesty's agent, by leave of the commission; and in one hundred and eighty-one, awards were made in favor of the claimants respectively against the United States, such awards aggregating \$1,929,819.

The entire amount of the awards against the United States, including interest, allowed by the commission was, therefore, as will be seen, a trifle over two per cent. of the entire claims presented to the commission, on behalf of British subjects, against the United States, including interest.

Of the claims of citizens of the United States against Great Britain, twelve grew out of the Saint Albans raid, so called, and were for acts of plunder alleged to have been committed by confederate soldiers in the town of Saint Albans, Vt., in October, 1864; one was for a like raid of confederate soldiers alleged to have been committed upon Lake Erie in September, 1864, and for injuries to the American steamers Philo Parsons and Island Queen, and the property of American citizens on board said steamers; four were for damages by reason of the al-

leged detention of vessels laden with saltpetre at Calcutta, in January and February, 1862, under ordinances of the governor-general of India prohibiting the exportation of saltpetre; one was for alleged injuries to the property of the claimant on the island of San Juan, in Washington Territory, U. S. A., in 1862 and 1864, by the alleged act or procurement of the commander of the British forces on that island, during the joint military occupation of the same by the United States and Great Britain, under a convention between them for that purpose; and one was for a royalty claimed to be due to the claimant from the British government by reason of the adoption and use by that government of a certain invention of the claimant, a citizen of the United States, for the improvement of breech-loading fire-arms.

Of the four hundred and seventy-eight British claims presented, two hundred and fifty-nine covered claims for property of British subjects alleged to have been taken by the military, naval, or civil authorities of the United States and appropriated to the use of the Government of those States; one hundred and eighty-one covered claims for property of British subjects, alleged to have been destroyed by the military and naval forces of the United States; seven covered claims for property of British subjects alleged to have been destroyed by the rebel or confederate forces carrying on war against the United States; one hundred covered claims for damages by reason of the alleged unlawful arrest and imprisonment of British subjects by the authorities of the United States; seventy-seven covered claims for damages by reason of the alleged unlawful capture and condemnation or detention of British vessels, their cargoes, &c., as prize of war by the naval forces and civil authorities of the United States; three covered claims for damages by reason of the alleged unlawful warning off of British vessels from the coasts of the States in rebellion by the United States cruisers, in the absence of any lawful blockade of the coasts and ports from which the vessels were so warned; and thirty-four covered claims of miscellaneous character.

Many of the memorials singly included claims coming under two or more of the classes above named, a fact which explains the excess of the sum of the different classes above named over the entire number of memorials filed.

A schedule of the American and British claims, respectively, in their order as filed and numbered, showing the names of the claimants, the nature of their respective claims, and the time and place where they arose, the amounts claimed, and the final disposition of the same, will be found in the appendix, C. This schedule is accompanied by alphabetical indexes, giving separately the names of the citizens of the United States claimants against Great Britain, and of the subjects of Her Britannic Majesty claimants against the United States, with reference to the number designating the claim of each person; and also by another alphabetical index referring to the vessels in respect of which damages

were claimed, and the numbers of the cases in which such claims were made.

The commission continued its sessions in the city of Washington from the day of its first meeting, with adjournments from time to time, down to the 10th day of May, 1873; on which day, under the authority of a supplemental article to the treaty concluded between the two governments, and authorizing the sessions of the commission elsewhere than in the city of Washington, it adjourned to meet at Newport, in the State of Rhode Island, on the third day of June following. On the last-named day it again met at Newport, and continued its sessions without interruption, except by adjournments from day to day, until the 25th day of September, 1873. On the last-named day, having finally decided and disposed of every claim pending before it within the time limited by the treaty, the commission made and signed in duplicate its final award, signed by all the commissioners, a copy of which will be found in the appendix, D.

Separate awards in duplicate were made and signed by the commissioners, in respect of each claim finally passed upon by them, as the cases were respectively disposed of.

The duplicate original final awards, as well as the duplicate original individual awards in the case of each claimant, were delivered by the commission, through its secretary, to the respective governments, together with duplicate journals of the entire proceedings of the commission, kept by the secretary and certified from day to day by the presiding commissioner.

The entire number of cases, American and British, decided by the commission (after deducting the eight claims withdrawn by Her Majesty's agent) was four hundred and eighty-nine. All the commissioners united in the awards in three hundred and seventy-two cases; in ninety-seven cases the awards were signed by Count Corti and Mr. Commissioner Gurney only, Mr. Commissioner Frazer dissenting; and in twenty cases the awards were signed by Count Corti and Mr. Commissioner Frazer only, Mr. Commissioner Gurney dissenting.

In the following pages I have attempted, to the best of my ability, to report the various principal questions which arose before the commission, giving a succinct statement of the allegations and proofs of the respective parties upon such questions, the arguments by which the respective claims were supported and opposed, the authorities cited by the respective counsel, and, as far as practicable, the principles established by the respective decisions of the commission. In but a very small proportion of the whole number of cases decided were the grounds of the decision stated in the record or by written opinions of the several commissioners. Wherever the grounds of the decision appear in the record itself, I have carefully given the language of the record.

Mr. Commissioner Frazer has kindly furnished me with copies of a few opinions pronounced by him before the commission, some of them

expressing the views of the commission, or a majority of it, and others dissenting opinions in cases in which his views were overruled by his associates upon the commission. I have deemed these opinions of either class worthy of preservation, and have accordingly inserted them either in the body of my report under the respective cases in which they were delivered, or in the appendix. A very few written opinions are understood to have been delivered by Count Corti and by Mr. Commissioner Gurney, copies of which I regret that I have been unable to obtain for publication with this report.

I proceed to consider the various principal questions which arose and were disposed of before the commission in their order.

I.—JURISDICTION AS TO THE PERSON.

Various questions as to the jurisdiction of the commission, in respect both of the persons entitled to a standing as claimants under the treaty and to the subject-matter of the claims, arose and were disposed of in the course of the proceedings. These questions, so far as relates to the jurisdiction of the commission as to the persons entitled to claim under the treaty, may be summed up as follows :

1. The question early arose in several cases as to the sense in which the respective expressions "citizens of the United States" and "subjects of Her Britannic Majesty" were used in the treaty. This question was raised by demurrer in several of the early cases, and was argued at length in the case of *Anthony Barclay vs. The United States*, No. 5.

This claim was brought for the alleged taking and destruction of and injuries to real and personal property of the claimant, situated near Savannah, by the army of General Sherman, in December, 1864. The memorial alleged the claimant to have been a native-born subject of Her Britannic Majesty, but to have been domiciled for many years prior to the year 1858 within the United States, a portion of that time as Her Majesty's consul in the city of New York, and from that time forward to the end of the war a resident of Chatham County, Georgia.

A demurrer was interposed to the claim on the ground, among others, that "the claimant, having been at the time of the alleged acts domiciled and engaged in trade and business within the enemy's country, cannot claim the position of a subject of Her Britannic Majesty within the twelfth article of the treaty."

Under this demurrer, the counsel for the United States contended that, under the twelfth article of the treaty, the terms "citizens of the United States" and "subjects of Her Britannic Majesty" were to be taken not in their strict meaning, under municipal law, of absolute citizenship for all purposes, or of paramount allegiance to a sovereign, but in the larger sense recognized by international law, in which sense it was contended that all persons were included within those respective expressions who by permanent domicile were within the protection of

the government under which they resided, and who thereby owed to the country of their domicile that allegiance, perhaps temporary and qualified, exacted by such domicile. In other words, it was contended that within the terms of the treaty all persons permanently domiciled within the United States were to be taken as citizens of the United States, and all persons permanently domiciled within the jurisdiction of Great Britain were to be taken as subjects of Her Britannic Majesty.

The counsel for the United States cited in support of this doctrine the following elementary writers: Twiss' Law of Nations, (war,) 233, 298-9; id., 82, 83; 3 Phillimore, 603; 1 Kent's Com., 74; 2 id., 63; Lawrence's Wheaton, 557 to 567; Calvo's Derecho Internacional, 526 to 536; Halleck, 702, 705, 717; 3 Greenleaf's Ev., § 239; Story's Conflict of Laws, § 68.

He cited, also, from the British and American reports in admiralty and prize cases, the following: The Indian Chief, 3 Rob., 12, 22; The Citto, id., 38; The Harmony, 2 id., 322; The Bernon, 1 id., 102; The Noyade, 4 id., 251; The Danous, id., 255, *n.*; The President, 5 id., 227; The Anna Katherina, id., 167; The Matchless, 1 Hagg. Adm., 97; The Schooner Nancy, Stewart's Rep., (Nova Scotia, Vice-Admiralty,) 49; The Pizarro, 2 Wheat., 227; The Charming Betsey, 2 Cranch, 64; The Venus, 8 id., 253; The Francis, 1 Gall., 314; The Ann Green, id., 274; The Joseph, id., 545, 568; Mrs. Alexander's Cotton, 2 Wall., 417; The Venice, id., 274; The Peterhoff, 5 id., 60.

Also, from the common-law reports: *Marryatt vs. Wilson*, (in Ex. Ch.,) 1 B. & P.; S. C., (in King's Bench,) 8 T. R., 31; *McConnell vs. Hector*, 3 B. & P., 113; *Tabbs vs. Bendelack*, id., 207, *n.*; *Bell vs. Reid*, 1 Maule & Selwyn, 726; *Albrecht vs. Sussman*, 2 Vesey & Beames, 322.

Also, from the British Privy Council cases, on questions arising under the treaty of 1814 between Great Britain and France; The Countess of Conway's case, 2 Knapp P. C. Rep., 364; Drummond's case, 2 id., 295.

He also cited the case of the Messrs. Laurent, decided by the umpire, Mr. Joshua Bates, under the convention of 8th January, 1853, between the United States and Great Britain, given in the report of the commissioners under that convention, Senate documents, first and second sessions, Thirty-fourth Congress, vol. 15, No. 103, p. 120.

Also, the decisions of the commissioners under the treaty of Guadalupe-Hidalgo, 2d February, 1848, between the United States and Mexico, in the cases of Clow, Powell, Cook, Haggerty, Davis & Co., and Barkley, administrator, in manuscript in the State Department.

Also, the correspondence of the British foreign office, relating to the cases of Kirby, Smith, Rothschild, Ashburnham, Stewart, and others, printed in the British Blue Book of 1871, Paper No. 4, on the Franco-German war.

Also, from the parliamentary debates, the speeches of Lord Palmerston, Hansard, third series, vol. 146, p. 41; of Sir Richard Bethell, id., 49; and of Lord John Russell, id., 56, on the Greytown case. Also, the

speech of Lord Palmerston on the question of compensation for property of British merchants destroyed at Uleaborg, *id.*, 1045, 1046.

He also cited the letter of Mr. Marcy, Secretary of State of the United States, to Count Sartiges, the French minister, Ex. Doc. No. 9, Senate, Thirty-fifth Congress, first session ; and Earl Clarendon's citation of same, *Hansard*, third series, vol. 146, p. 53. Also, Lord Palmerston's speech on the case at Leghorn, *Hansard*, third series, vol. 113, p. 635 ; and the note on the same case in *Vattel*, Guillaumin's ed., 1863, vol. II, p. 49 ; and the dispatch from Prince Swartzenburg to Baron Hatter, of 14th April, 1850 ; and from Count Nesselrode to Baron Brunow, of 2d May, 1850, cited in *Torres Caicedo Union Latino Americano*, pp. 343, 348. Also, the opinion of Attorney-General Stanbery on the bombardment of Valparaiso, *Attorney-General's Opinions*, vol. 12, p. 21 ; also, Professor Bernard's "Neutrality," pp. 443, 444 to 457, *n.*

Her Majesty's counsel, on the other hand, cited on this point the decision of Dr. Lieber, the umpire of the commission under the convention of 4th July, 1868, between the United States and Mexico, in the cases of Anderson and Thompson, and of the Messrs. Barron. Also, the case of the *Charming Betsey*, 2d Cranch, 120 ; *Phillimore*, part 5, cap. 1 ; *Grotius*, lib. 2, cap. 25 ; *Vattel*, lib. 2, cap. 6, sec. 7 ; *id.*, lib. 2, cap. 17, secs. 263, 270 ; *Wheaton*, 355 ; *Kent*, vol. 1, sec. 4 ; the Constitution of the United States, Art. 3, sec. 2 ; the Judiciary act of the United States of 1789, (1 Stat. at L., 76, 78, secs. 9, 11 ;) the act of 27th June, 1868, (15 Stat. at L., 243 ;) the abandoned and captured property act of 12th March, 1863, (12 Stat. at L., 820 ;) the correspondence between Lord Lyons and Mr. Seward in relation to the case of Henry E. Green, United States diplomatic corr., 1863, part 1, pp. 515, 570 ; and the annual message of President Lincoln to Congress, of December, 1863, official publication, pp. 2, 4.

The commission overruled the demurrer of the United States by the following decision, rendered on the 16th December, 1871, in which all the commissioners concurred :

The first thing to be decided in this case is whether the commissioners have jurisdiction, which depends upon whether the claimant is, within the meaning of the treaty, a British subject.

That he is in fact a British subject there is no doubt ; but it is contended that, being domiciled in the United States, he is not one of those intended by the framers of the treaty to be included in that term. It is undoubtedly true, as appears from various cases cited in the argument, that the subject or citizen of one state domiciled in another acquires, in some respects, privileges, and incurs liabilities, distinct from those possessed in right of his original birth or citizenship. But he still remains the subject or citizen of the state to which he originally belonged, and we see no reason to suppose that it was the intention of either government to put the limited meaning on the words "British subject," contended for in the arguments in support of the demurrer, so as to exclude from our jurisdiction a British subject who has never renounced his original allegiance, or become naturalized in any other country.

The fact of the claimant having his domicile in one of the Confederate States will, of course, have a material bearing on the point, also raised in the demurrer, as to the

liability of the claimant's property to seizure or destruction by the Federal Army. It is difficult to lay down a general rule applicable in all cases to the rights of an invading army, nor, in this particular case, is that necessary.

The statements contained in the memorial are, for the purposes of this argument, to be assumed to be true. One of the statements in the memorial is, that part of the claimant's property was taken possession of by the Federal Army without any military necessity, convenience, provocation, or inducement, and plundered, and that part was wantonly destroyed.

Supposing this to be true, we are not prepared to say that some liability might not be established against the United States Government.

The demurrer is, therefore, disallowed; but the United States Government will be at liberty, if they think fit, to take issue upon the facts alleged in the memorial.

In the case of *James Crutchett vs. The United States*, No. 4, a claim for property taken and appropriated by the United States in the District of Columbia, the memorial showed the claimant at the time of the alleged injuries, and for many years previous, domiciled at Washington.

A demurrer was interposed specifying, among other grounds, that the claimant, being so domiciled within the United States, was not entitled to the standing of a British subject within the treaty.

The case was submitted on this point upon the authorities cited in *Barclay's case*, as above noted, and the demurrer was overruled.

The decisions of the commission in these and other similar cases established the doctrine that, so far as relates to the question of jurisdiction, the national character of the party is to be determined by his paramount allegiance, where that is not double, irrespective of the fact of domicile.

In the case of *George Adlam vs. The United States*, No. 40, it appeared from the memorial, in addition to the fact of domicile within the insurrectionary States, that the claimant had taken the preliminary steps toward naturalization under the statutes of the United States, by filing his declaration on oath of his intention to become a citizen of the United States, and to renounce all allegiance to Her Britannic Majesty, the sovereign of his nativity.

The counsel for the United States on demurrer claimed that such oath, added to the fact of domicile, established the national character of the claimant as a citizen of the United States within international law, and barred him from any standing as a British subject under the treaty.

The demurrer was overruled.

In the case of *Joseph Gribble vs. The United States*, No. 116, the proofs on the part of the defense showed that the claimant, who had filed his declaration of intention, under the naturalization act, before the presentation of his memorial, had subsequently, and pending his claim before the commission, completed his naturalization, and was at the time of the submission of his cause a citizen of the United States. His claim was disallowed on the merits; but the undersigned is advised that the commission was unanimous in the opinion that his naturalization had deprived him of a standing before the commission as a British subject.

In the case of John W. Sharpe *vs.* The United States, No. 92, the claimant's proofs showed that he had exercised rights of citizenship of the United States, by voting, prior to the presentation of his memorial.

The counsel for the United States contended, first, that such acts constituted an estoppel against the claim of the claimant to a standing as a British subject under the treaty; and, second, that if strictly and technically there was no estoppel, such acts were to be regarded as very strong evidence of the fact of naturalization, and sufficient to overcome the claimant's own denial on oath of such naturalization.

An award was made in favor of the claimant, Mr. Commissioner Frazer dissenting; and the objection on the part of the United States was thus overruled.

In the case of Robert Eakin *vs.* The United States, No. 118, the proofs showed that the claimant had, in 1857, in the State of Mississippi, exercised acts of citizenship of the United States by holding an office, which, under the laws of Mississippi, could only lawfully be held by a citizen of the United States; and that he had, in 1862, the State of Mississippi being then in rebellion against the United States, held a like office, which, by the then laws of Mississippi, could only be held by a citizen of the Confederate States.

The counsel for the United States contended that the claimant was, by each of these acts, debarred from a standing as a British subject.

The claim was disallowed without a separate and distinct decision of this question; but the undersigned is advised that a majority, at least, of the commission were of opinion that such holding of office under the rebel government was of itself a violation of neutrality, and debarred the claimant from a standing before the commission.

In the case of the executors of Robert S. C. A. Alexander *vs.* The United States, No. 45, the memorial showed the claimants' testator to have been born in the United States in 1819, but alleged him to have been the son of Robert Alexander, a native of Scotland, and a natural-born subject of the British Crown. It also alleged that the testator had always held and claimed himself to be a liege subject of the British Crown, and that he had always been so held and regarded by all others. That in his early youth he had returned to Scotland, and there for many years held office in the commission of the peace and other posts of trust under the British Crown. That during the war his residence was partly in Scotland and partly in Kentucky, he having died in Kentucky in December, 1867. The claim was for the occupation of and injuries to lands and real estate of the testator in Kentucky by United States troops during the war.

On demurrer it was contended, on the part of the United States, that the claimants had no standing before the commission in the right of their testator as a British subject; that, although by the law of Great Britain he was a British subject, he was also by the laws of the United

States a citizen of those States; and that, in such a case of double or conflicting allegiance, the claimant was not to be regarded as a subject of Great Britain within the meaning of the treaty.

The counsel for the United States cited the Revised Statutes of Kentucky, vol. 1, p. 238, c. 15, art. 1, sec. 1, as establishing the fact of citizenship under the law of Kentucky; and also Drummond's case, 2 Knapp's P. C. Rep., 295.

The commission held the claimants not entitled to a standing, and dismissed the case, Mr. Commissioner Gurney dissenting.

Mr. Commissioner Frazer read a written opinion, as follows :

The testator was by British law a British subject, but he was also by the law of the United States an American citizen, by reason of his birth in Kentucky; and he was not capable of divesting himself of his American nationality by mere volition and residence from time to time in Scotland and holding office there.

Being, then, a subject of both governments, was he a British subject within the meaning of the treaty? The practice of nations in such cases is believed to be by their sovereign to leave the person who has embarrassed himself by assuming a double allegiance to the protection which he may find provided for him by the municipal laws of that other sovereign to whom he thus also owes allegiance. To treat his grievances against that other sovereign as subjects of international concern, would be to claim a jurisdiction paramount to that of the other nation of which he is also a subject. Complications would inevitably result, for no government would recognize the right of another to interfere thus in behalf of one whom it regarded as a subject of its own. It has certainly not been the practice of the British government to interfere in such cases; and it is not easy to believe that either government meant to provide for them by this treaty. In Drummond's case the terms of the treaty were quite as comprehensive as those of this treaty; and yet it was there held that the claimant was not within the treaty, not being within its intention. This was held even after it was ascertained that he was not a French subject, he having merely evinced his intention to regard himself as a French subject.

I am advised that in this opinion the presiding commissioner concurred.

In the case of Joseph Fry Mogridge *vs.* The United States, No. 345, the same principle was applied by a majority of the commission under a like state of circumstances, except that the memorial in effect alleged the claimant to have been born in Pennsylvania of native-born British subjects, never domiciled within the United States, but on a visit there at the time of his birth, and who returned to England within a few weeks thereafter, where the claimant remained during his minority. He was domiciled in the United States at the time of the alleged injuries—the taking and destruction of his property.

His claim was dismissed in like manner.

In the case of Joseph W. Scott *vs.* The United States, No. 226, for damages for wrongful imprisonment, and for appropriation and destruction of property, the proofs showed that the claimant was born in the British province of New Brunswick in 1813. His father, Daniel Scott, was born in the then province of Maine, in March, 1768, and continued to reside in Maine after the recognition of the independence of the colonies by

Great Britain, and after he became of age, which was in March, 1789. The time of Daniel Scott's removal to New Brunswick was left somewhat uncertain, ranging from December, 1789, to 1794.

On the part of the United States it was claimed that Daniel Scott, the father, having been a citizen of the United States, the claimant, Joseph W. Scott, was by the naturalization laws of 1802 (2 Stat. at L., 155, § 4) also a citizen of the United States, and was debarred from a standing before the commission within the principle held by the commission in the case of Alexander.

At the time of the alleged injuries, and for many years previous, he was domiciled in the State of Florida, one of the insurrectionary States.

The counsel for the United States cited the first article of the treaty of peace between the United States and Great Britain, concluded September 3, 1783, (8 Stat. at L., 80, 81,) and the cases of *Inglis vs. The Sailors' Snug Harbor*, 3 Peters, 99; *Shanks vs. Dupont*, id., 244; *Doe vs. Acklan*, 2 B. & C., 779; and *Marryatt vs. Wilson*, 1 B. & P., 430.

On the part of the claimant it was contended that Daniel Scott, being a minor at the time of the conclusion of the treaty of peace between Great Britain and the United States, was entitled, within a reasonable time after attaining his majority, to elect to which government he would adhere, and that he did make such election within such reasonable time by his removal to New Brunswick.

Claimant's counsel cited the cases of *Jephson vs. Riera*, 3 Knapp's P. C. R., and *Count Wall's case*, id.

An award was made in favor of the claimant, Mr. Commissioner Frazer dissenting. No written opinions were read. I am advised that the decision proceeded upon the ground that Daniel Scott's removal to New Brunswick constituted an election, within a reasonable time, to adhere to his British allegiance.

In the cases of *Elizabeth L. H. Bowie vs. The United States*, No. 320, *Martha M. Calderwood vs. same*, No. 360, *Martha M. Tooraen vs. same*, No. 184, and others, it was held that the national character of a married woman is governed by that of her husband in all cases, irrespective of domicile; and that on the death of the husband the national character of the widow acquired by marriage remains unchanged. From this conclusion Mr. Commissioner Frazer dissented, in the case of a widow of American origin who had always remained domiciled within the United States, holding that in such case, upon the death of her British husband, her original national character reverted.

In the case of *Mrs. Bowie*, No. 320, the claimant was by birth a British subject, but was at the time of the alleged injuries the widow of a citizen of the United States, and domiciled in the insurrectionary State of Virginia, and before the filing of her memorial had again intermarried with a citizen of the United States, who was still living and there domiciled. Her claim was disallowed, all the commissioners agreeing.

In the case of Mrs. Calderwood, No. 360, claimant was a native-born citizen of the United States, had intermarried with a British subject who was since deceased, and had always been domiciled in the State of Louisiana. The commission, on demurrer, held her a British subject, Mr. Commissioner Frazer dissenting.

In the case of Mrs. Tooraen, No. 184, claimant was by birth a British subject, her husband at the time of marriage being a subject of Sweden, but naturalized as a citizen of the United States subsequent to the marriage. Claimant and her husband were both domiciled from the time of marriage within the United States. Her claim was unanimously dismissed.

In the case of Jane L. Brand, No. 180, which was a claim for alleged wrongful imprisonment and appropriation of the claimant's property at New Orleans, it appeared that claimant, a native of Ireland, had been for several years domiciled in New Orleans. She there married in 1838 a citizen of the United States, who died in 1849, and she had since remained his widow and continued domiciled in New Orleans. Her memorial alleged that, though married to an American citizen, "she never in any manner adopted his nationality;" that after his death she uniformly claimed the character of a British subject; and that in August, 1862, before the commission of the acts complained of, or a part of them, she had made proof of her character as a British subject before the British consul at New Orleans, and been duly registered as such.

On the part of the claimant it was contended that at the time of the claimant's marriage and of the death of her husband, and up to the passage of the act of the United States Congress of 10th February, 1855, (10 Stat. at L., 604,) the claimant was not by the laws of the United States a citizen of those States, the act of 1855 being the first to give such status to an alien-born woman by her marriage to a citizen of the United States. That up to the conclusion of the naturalization convention of 13th May, 1870, between the United States and Great Britain, (16 Stat. at L., 775,) and the supplemental convention of 23d February, 1871, between the same nations, (17 *id.*, 841,) no provision existed for the manner in which a British subject who had married a citizen of the United States should, upon becoming a widow, reclaim her original nationality. That the universal custom among nations, founded upon international comity, if not upon international law, allowed such widow to choose whether she would retain the nationality of her deceased husband or return to that of her birth. That Mrs. Brand, by always claiming, after her husband's death, the condition of a British subject, and by registering herself as such in the consulate at New Orleans in 1862, had done all that was necessary to enable her to re-assume her original national character; and that it was not necessary for her to avail herself of the provisions of the conventions of 1870 and 1871 in order to

disclaim and repudiate any alleged condition of American citizenship acquired by her marriage.

Her Majesty's counsel cited the case of *Kelly vs. Owen*, (7 Wall., 496.)

On the part of the United States it was contended that, under the principles recognized by the commission in the cases of *Mrs. Calderwood*, No. 360, and others, it was settled that the national character of a married woman was in all cases determined by that of her husband; and that such national character, once acquired by marriage, continued on the death of the husband. That this doctrine had always prevailed in Great Britain, as well as elsewhere, where the domicile of the wife and widow had continued to be that of the husband's nationality; and that by no treaty stipulation or law, municipal or international, was the widow ever allowed to reclaim her original nationality while still domiciled within the nationality of her husband, until the conventions of 1870 and 1871; and that by those conventions she could only reclaim her original nationality in the form provided by the convention of 1871, which in the case of *Mrs. Brand* had never been done. That she was, therefore, both at the time of the commission of the alleged wrongs and at the time of the presentation of her memorial, a citizen of the United States.

The commission unanimously sustained the doctrine maintained on behalf of the United States, and dismissed the claim for want of jurisdiction.

2. In the cases of *James B. Halley, administrator, &c., vs. The United States*, No. 205, *Ann Grayson, administratrix, &c., vs. same*, No. 291, and others, the question was raised as to the jurisdiction of the commission in the case of the personal representatives of British subjects who had died holding claims within the treaty against the United States, where such personal representatives were citizens of the United States.

On the part of the United States it was claimed that under the treaty the claims against the United States of which the commission had jurisdiction must be not only those arising out of acts committed against the person or property of British subjects, but also must be prosecuted before the commission on behalf of British subjects; and that where the claim, though originally one of a British subject, had been transferred by act of the original claimant or by operation of law to citizens of the United States, such citizens could have no standing before the commission.

In the case of *Mrs. Grayson*, No. 291, the claim was prosecuted by her as administratrix of *John J. Cowley*, a deceased British subject. The claimant was the widow of *Cowley*, but had, before presenting her claim, intermarried with *Grayson*, a citizen of the United States. The distributees of *Cowley's* estate were the widow and certain brothers and sisters, all British subjects and domiciled within the British dominions. An award was made in favor of the claimant for the one-half of

the claim to which the distributees were entitled, rejecting the one-half belonging to the widow as the claim of an American citizen.

In the case of Halley and other cases submitted with it the following decision was entered :

The majority of the commissioners are of opinion that, where the claim is by an administrator in respect of injuries to property of an intestate who was exclusively a British subject, and the beneficiaries are British subjects as well as American citizens, the claim may be prosecuted for their benefit. The commissioners are all of opinion that the particular nationality of the administrator does not affect the question.

From the first portion of this decision Mr. Commissioner Frazer dissented, as follows :

By the very words of the treaty (Article 12) the claim must be, first, for an act done to the "person or property of" a British subject; second, it must be made "on the part of" a British subject. Distinctly, then, these two things must concur to give us jurisdiction. This is too plain to admit of controversy. The treaty is the language of both governments, and must be construed to effectuate not the intent of *one* only, but of *both*. If any of its terms have one sense in Great Britain and another in the United States by reason of their respective laws, neither of these senses can fairly be taken; another, though limited, sense must be sought, common to both countries. There is such a restricted sense of the language employed here. In Alexander's case I expressed myself on this branch of the present question. One born in the United States of British parents residing here would be protected by the United States as fully as any American against wrongs from other countries, Great Britain probably not excepted. And Great Britain would not, as against the United States, intervene in his behalf, though she would claim him as her subject, and hold him to accountability as such if found bearing arms against her. And if born here of British parents during a temporary sojourn, but afterwards domiciled in England and never residing here, the United States would practically treat him as not an American, refusing to intervene in his behalf against any other government, though she, too, would hold him to accountability as a citizen if found in arms against her. And so of persons born in Great Britain of American parents. The treaty is the product of diplomacy, providing this international tribunal for the amicable settlement of claims concerning which each power could lawfully claim redress as it saw fit, not of claims for which it would have no right to claim redress.

Alexander's case was a little different. He had estates and a domicile in both countries; was born in the United States of British parents domiciled here, but claiming only British nationality. This would be an interpretation of the treaty which would maintain our jurisdiction in all cases in which the complaining government would, by international law, have been at liberty to demand redress. It would settle all such cases, and thus effectuate the purpose of the treaty which was to terminate our diplomatic differences. The principles above stated, it seems to me, apply quite as fully where the person beneficially interested in the claim made before us is of both nationalities as where the person originally injured, being also of both nationalities, is still living and makes claim. To entertain the claim in either case is to assume that each government has by the treaty recognized its responsibility to the other for injuries done to those who are by its laws its own citizens or subjects. This construction, it seems to me, is utterly inadmissible. I cannot possibly bring myself to believe that either government intended any such thing.

II.—JURISDICTION AS TO SUBJECT-MATTER.

Numerous questions in this regard arose during the progress of the commission, but they are so intimately connected with the merits of the cases themselves that they will be treated of under the separate cases as they may be hereafter considered.

III.—ALLOWANCE OF INTEREST.

The commission ordinarily allowed interest at the rate of six per cent. per annum from the date of the injury to the anticipated date of the final award.

IV.—CLAIMS OF CITIZENS OF THE UNITED STATES AGAINST GREAT BRITAIN.

Saint Albans raid.

The First National Bank of Saint Albans *vs.* Great Britain, No. 1.
 Collins H. Huntington *vs.* same, No. 2.
 William and Erasmus D. Fuller *vs.* same, No. 3.
 Bradley Barlow, receiver of the Saint Albans Bank *vs.* same, No. 4.
 Mariette Field, administratrix, &c., *vs.* same, No. 5.
 Seth W. Langdon *vs.* same, No. 6.
 Joseph S. Weeks *vs.* same, No. 7.
 Breck & Wetherbee *vs.* same, No. 8.
 Aldis O. Brainerd *vs.* same, No. 9.
 Charles F. Everest *vs.* same, No. 10.
 Oscar A. Burton, receiver of the Franklin County Bank *vs.* same, No. 13.
 Lucien B. Clough, administrator, &c., *vs.* same, No. 14.

These claims all arose out of the same transaction, and were considered and decided together. All, except No. 14, were claims for property taken and appropriated or destroyed at Saint Albans, Vt., by an incursion of rebels, known as the Saint Albans raid, in October, 1864. No. 14 was a claim brought by the administrator of Elinas J. Morrison, deceased, to recover damages for the wrongful killing of said deceased by the rebels engaged in the same raid.

The entire amount claimed in all the cases was \$313,490, besides interest.

The allegations in all the memorials were substantially the same, and as follows:

That, shortly before the 19th of October, 1864, a large number of persons, then domiciled or commorant within Her Britannic Majesty's province of Canada, combined together within those provinces for the purpose of committing acts of depredation, rapine, and war from said provinces as a base of operations, and as a shelter for immediate retreat, against the persons and property of citizens of the United States

residing within those States. That some twenty or more of those persons, shortly before that day, pursuant to the combinations so made, proceeded from Her Majesty's province of Canada East into the territory of the United States, and assembled at the village of Saint Albans, in the State of Vermont, distant about twelve miles from the border of said province. That, being so assembled, they took forcible and armed possession of a part of said village; there seized and imprisoned several citizens of the United States; fired shots at sundry citizens; by such shooting killed the decedent named in No. 14; set fire to several buildings in the village; entered three of the banks therein, seizing and imprisoning the officers of such banks, and seized and appropriated the securities and moneys from the safes of said banks, together with horses and other property named in the several memorials. That all these acts were committed underarms and with military uniform, equipage, and organization to a greater or less extent. That after the perpetration of these acts the perpetrators retreated in a body toward the province of Canada, and entered that province, carrying with them the plundered property, and closely pursued by the citizens of Saint Albans and vicinity, who organized for that purpose, and would doubtless have captured the fugitive marauders but for the asylum afforded them by Her Majesty's province. That shortly after the arrival of the retreating marauders within the province of Canada, several of them were arrested by local magistrates in that province, and a part of the plunder carried off by them was seized by such magistrates and retained in their custody. That immediately thereafter requisition was made by the Government of the United States upon Her Britannic Majesty's government for the surrender of said persons on the charges respectively of murder, assault with intent to commit murder, and robbery, committed within the jurisdiction of the United States, such requisition being based on and conformable to the terms of Article 10 of the treaty of 9th August, 1842, between the United States and Great Britain. That the requisition was supported by full evidence on the part of the United States of the commission by the persons so charged of the acts of violence above named. That before the hearing before such local magistrates of the charges preferred against such arrested persons, Her Majesty's government for said province caused the jurisdiction of such local magistrates and the proceedings before them to be superseded by one Charles J. Coursol, a judicial officer of the province, who took jurisdiction of the matters charged, issued warrants for the arrest of the persons so charged, and caused such persons to be removed from the jail at St. John's, Canada, where they were confined under process issued by the local magistrates, to the city of Montreal; and also caused the property seized to be transferred from the custody of the local magistrates to the custody of Her Majesty's officers in Montreal. That a partial hearing was had before Judge Coursol, on which hearing full evidence was made of the commission of such acts of violence by the persons so

charged ; and that the hearing was, on the application of the persons charged, unreasonably, and against the protest of the counsel for the United States, postponed from time to time to the 13th December, 1864, for the purpose of enabling the respondents to make proof of their being commissioned and authorized by the Confederate States of America, so called, to commit the acts of violence named. That on the 13th December Judge Coursol, without hearing any further proofs or arguments, in a hasty, unjudicial, and indecent manner discharged from custody the persons against whom such hearing had chiefly proceeded, and all other persons arrested and held on the same charge, and immediately and with indecent haste ordered the money and property of the claimants found upon the persons so charged to be delivered up to them, and permitted them to make their escape therewith, such money and property amounting to \$80,000 and upwards, and having been fully proved and identified as the money and property of the claimants, and as having been plundered and carried off by the persons so charged and arrested and discharged. That subsequently further warrants were issued by Judge Smith, one of Her Majesty's justices of the superior court for the said province, on which warrants, after much delay and hindrance, arising from the friendliness of the constabulary of the province to the confederate raiders and their pretended government, and the unfriendliness of the same to the United States Government and its people, in consequence whereof most of the offenders were allowed to escape, and all the money and property was allowed to be secreted or removed, five of the persons so charged were again arrested and brought before Justice Smith upon an application of the United States for their extradition. That after much delay Justice Smith decided that the persons were not the subject of extradition under the treaty, but were belligerents against the United States in committing the acts complained of, and in making their retreat to Canada and enjoying its asylum, and discharged the prisoners. That by these acts of the judicial officers of Canada, Her Majesty's government, in effect, refused to surrender the persons who committed these acts of violence within the United States, and refused to restore to the United States and to its citizens the property and money so taken and carried by the plunderers into the province of Canada. That in the commission of these acts, as well as in their organization and preparation for the same, these raiders claimed to act under the authority and in aid of the so-called Confederate States of America—the enemies of the United States—and that their confederation and organization for the purpose of committing these acts were well known to many of the government officials, local officers, and citizens of the province of Canada before the occurrence of the acts named at Saint Albans. That in consequence of the culpable negligence or connivance of the authorities of the province, no steps were taken to prevent the expedition, or to give any information to the United States Government, or any of its officers, so as to enable them to protect them-

selves against such acts. That both before and after the acts in question warm sympathy and hospitality were extended to the offenders by a large number of the leading and influential citizens of the province of Canada, and the acts themselves were vindicated and approved by some of the official government newspaper organs in the province; and that such sentiments prevailed there that magistrates and peace officers in many instances refused search-warrants and the necessary assistance to enforce the same; in consequence of which many of the offenders were allowed to escape without arrest and carry with them the plundered property. The memorials charged Her Majesty's government and official authorities in Canada to have been culpably negligent in permitting the raid in question from their borders, and in permitting the returning band, under fresh pursuit, to escape into Canada and obtain asylum therein, and in refusing to surrender them, with their booty, to the United States, and in neglecting and refusing, upon full notice and demand, to restore to the United States or to the claimants the money and property of the claimants so carried off by the raiders.

Proofs taken on the part of the claimants fully established the facts of the depredations committed at Saint Albans, as alleged in the several memorials, and that those depredations were committed by a body of men who came separately or in small detachments from Canada in the guise of ordinary travellers and without any open or apparent organization or military array. That their first apparent action in an organized body or in unison commenced at Saint Albans, on the 19th October, 1864, and continued less than an hour. That immediately after the committing of the depredations charged in the complaint they retreated in a body toward Canada; were closely pursued by the citizens of Saint Albans and vicinity, who rallied for that purpose; and that the pursuit was only abandoned upon the retreating party entering the province of Canada. The party acted under the command of one Bennett H. Young, a lieutenant in the army of the Confederate States, and all its members were claimed to have been connected with the regular military service of the confederates.

The arrest, examination, detention, discharge, re-arrest, and final discharge of some of the party, substantially as alleged in the memorial, were also established by proofs on the part of the claimants. Testimony was taken on both sides bearing upon the question of the knowledge by the authorities of Canada of the intentions of the confederates to organize a raid from Canada upon Saint Albans or other frontier towns of the United States, and as to the conduct of those authorities in regard to taking any measures to prevent or suppress such intended raid.

Among the witnesses examined on the part of the claimants to show such knowledge by the Canadian authorities, and their failure to take proper steps to prevent or suppress the raid, were Guillaume Lamothe chief of police of the city of Montreal at the time of the raid, and Jacob Rynders, a detective in the employ of the United States at Montreal at

the same time. The evidence of these and other witnesses tended to establish the fact that the raid upon Saint Albans was arranged and organized in Canada; that the fact that that raid or similar raids were in contemplation was known to high officers of the Canadian government, among others to Sir George E. Cartier and Sir Etienne Taché, then members of the Canadian ministry; to Col. William Ermatinger, a stipendiary magistrate, having the entire control of the police force and militia for the district of Montreal, embracing all the frontier towns in Lower Canada bordering upon the United States; to Lamothe himself, chief of police for the city of Montreal; and to Judge Coursol, government superintendent of police for the city and district of Montreal.

The claimants also put in evidence the report of Frederick William Torrance, esq., who was commissioned in January, 1865, by the Canadian government to investigate and report upon the proceedings connected with the arrest, examination, commitment, and discharge of the raiders, the seizure of the moneys found upon them, and the circumstances connected with the giving up of such moneys; also, whether there was any refusal to execute any warrant for the re-arrest of the accused; if so, by whom and for what reason; and generally to obtain authentic information of all matters and things connected with such arrest, discharge, and re-arrest of the prisoners, and the seizure, detention, and giving up of the moneys. In this report, made to the Canadian government and dated 18th May, 1865, Mr. Torrance went fully over the whole ground committed to his investigation, Messrs. Coursol and Lamothe appearing before him and being permitted to cross-examine witnesses. The report recited the facts found by him, including the transactions at Saint Albans substantially as alleged in the memorials; the flight of the raiders into Canada, closely pursued by the citizens of Vermont; the arrest in Canada of several of the raiders by the local authorities in the district bordering upon Vermont; the seizure upon the persons of those arrested and in deposits where secreted by them of about \$87,000 plundered from the banks; the subsequent taking of jurisdiction of the cases of the persons arrested by Judge Coursol, and the transfer of those persons to Montreal; the examination of the prisoners, or some of them, before Judge Coursol, the government of Canada, the United States, and the prisoners all being represented upon such examination, and the same having been continued from the 7th November to the 13th December, including an adjournment of several weeks during that time to enable the defendants to make proof of their relations to the government of the Confederate States, and to show that their acts were those of lawful belligerents and not of private robbers. That on the 13th December an objection was raised by the counsel for the prisoners to the jurisdiction of Judge Coursol, which objection had some days previously been made the subject of a private interview between Judge Coursol and the counsel for the prisoners; and that thereupon the prisoners were immediately discharged, and the money found upon them,

to the amount of about \$87,000, was surrendered to them by the chief of police, under the private advice of Judge Coursol, though without any judicial order to that effect. The report of Mr. Torrance acquitted both Judge Coursol and Mr. Lamothe of the imputation of being influenced by corrupt motives. It showed that after the discharge of the prisoners by Judge Coursol, new complaints were made on behalf of the claimants or their Government before Mr. Justice Smith, on which warrants issued for the re-arrest, and that the execution of these warrants was refused by Mr. Lamothe and one of his deputies. Under the instructions of Sir George E. Cartier, and under the stimulus of a reward offered by the government of Canada for the re-arrest of the prisoners, five of them were shortly afterwards re-arrested upon the warrants issued by Justice Smith, and on examination were discharged by him, on the ground that their acts at Saint Albans were belligerent acts and not crimes subjecting them to extradition under the treaty between the United States and Great Britain.

Mr. Torrance stated his conclusions upon the whole case to the following effect :

That Mr. Lamothe, as chief of police, committed an improper act in the surrender of the money to the prisoners without official directions from Judge Coursol, as whose agent he held the money, so to deliver it. That the oral and unofficial instruction of Judge Coursol to Mr. Lamothe to the effect that the prisoners, if liberated, would be entitled to the possession of the money, was not a sufficient justification to Lamothe for its delivery, but was an improper instruction on the part of Judge Coursol, and might have misled Lamothe.

That Judge Coursol, if his decision that he had no jurisdiction of the case was a correct one, was in fault for having omitted to communicate with the Government before announcing such decision and discharging the prisoners, and had laid himself open to the imputation of a grave dereliction of duty in a matter of national importance. And, on the other hand, if his decision that he had no jurisdiction was erroneous, he was liable to a criminal prosecution by indictment for malfeasance in his office by reason of the discharge of the prisoners.

And, finally, that the government of Canada was responsible to the Government of the United States for the acts of Judge Coursol and Mr. Lamothe, and was under obligation to restore the booty brought into the province by the belligerents.

Under this report the government of Canada subsequently refunded to the claimants, to whom the same belonged, the sum of about \$58,000, the gold value of the \$87,000 seized from the arrested raiders and subsequently returned to them. This payment did not include anything on account of the still larger sums plundered and carried off by the raiders, and which never came to the hands of the Canadian authorities.

On the part of the defence various prominent officials of Canada were examined, among them Viscount Monck, governor-general of Canada

at the time of the raid; Sir John A. McDonald, K. C. B., and Sir George E. Cartier, Bart., members of the Canadian ministry at the same time, whose evidence tended to show the absence of any such knowledge or information on their part, in regard to any intended invasion of the United States from Canada, as to call upon them for any precautionary acts beyond those actually taken by the government, and to sustain the claim on the part of Her Majesty's government, that the provincial government of Canada were chargeable with no lack of due diligence in failing to prevent the perpetration of the wrongs alleged by raiders proceeding from Canada in the manner above detailed.

In argument it was maintained on the part of the claimants that the evidence showed the raid to have been plotted and organized in Canada, under the advice and direction of Messrs. C. C. Clay, jr., and Jacob Thompson, confederate agents commorant in Canada. That the sympathies of the Canadian people and the subordinate officials of the government were largely favorable to the confederate cause and hostile to the Government of the United States. That there was no neutrality law in force in Canada at the time of the raid. That in the absence of such neutrality law and by reason of the sympathies of the Canadian people and officials with the confederates, the confederates were enabled to use Canada as a base of operations—the scene of their plans and arrangements for warlike acts against the United States, as their point of departure upon those raids, and their asylum on their return from them. That supposing it conceded that Lord Monck and all his ministry were without fault on their part personally, the officers immediately charged with the maintaining of neutrality upon the frontier—Coursol, Ermatinger, and Lamothe—were shown to have been fully advised of the contemplated invasions, and to have failed of their duty in reporting their knowledge to the government, if they did fail so to report it, and in taking measures to prevent such invasions.

That the positions of Judge Coursol, as superintendent of police for the city and district of Montreal, and of Colonel Ermatinger, the magistrate charged with the entire control of the police force and the militia for the same district, were such as to make notice to them, in fact notice to the government, and that their failure in any respect to perform their official duty was the failure of the government, and charged Great Britain with the consequences of such neglect.

That the government of Canada was under obligation to constantly watch the movements of these enemies of the United States thus plotting the invasion of a friendly nation from the Canadian soil; should have arrested the persons engaged in such plots, or should have expelled them from Canada; and, if the law was found insufficient, should have called on Parliament to make it sufficient. That it was the duty of the Canadian Parliament to have provided by law the means of preventing such invasions; and that the absence of such municipal law could not

be pleaded in bar of the international liability of the government to perform its duty in preserving neutrality towards the United States, a friendly nation. That in fact the government of Canada actually did nothing to prevent these violations of neutrality from their soil, though with abundant reason, irrespective of proof of actual notice or knowledge, to apprehend such invasions by the confederates commorant in Canada; and that the actual notice of such intentions, brought home to Coursol, Ermatinger, and Lamothe, was a notice to the government itself, which was chargeable with the non-feasance or malfeasance of those officers. That the government of Canada was held to "due diligence" to prevent military operations by the enemies of the United States from the soil of Canada, as a base of operations, against the United States. That the measure of this diligence was to be determined by the nature of the danger to be apprehended from the neutral soil, the magnitude of the danger and the results of negligence, the means of the United States to resist or prevent it, the sympathy and aid which the enemies of the United States might receive in Canada, and the unfriendliness of the people of Canada to the United States, the fact of plans for former raids known to the government of Canada, and the hostile speeches and avowed intentions of the enemies of the United States, found in large numbers in that province. That all these considerations combined to require strict diligence on the part of the Canadian government to prevent hostile incursions into the United States across the long and unprotected frontier between those States and Canada.

The counsel for the claimants insisted that the Canadian government had entirely failed in the performance of these international duties, and that by reason of such failure Great Britain was liable to the United States for the injuries inflicted by the raiders. That the United States had done all in their power, and all which they were required by international law to do, to protect themselves against such dangers from Canada; and that the Government of those States had in their diplomatic correspondence preferred such claims against the government of Her Britannic Majesty, and had fully provided by the treaty for the submission of them to the decision of the commission.

The counsel for the claimants cited the opinion of Count Sclopis upon the question of due diligence in the tribunal at Geneva; also, on the same subject, 1 Phill., 21, 230 to 232; 3 id., 201 to 237; Halleck, 318, 524. They also cited various passages from the diplomatic correspondence between the governments of the United States and Great Britain during the war, and from the papers before the Geneva tribunal, as well as from the protocols to the treaty of 8th of May, 1871, to show that the Government of the United States had always claimed the British government responsible for the injuries to their citizens by the St. Albans raid, and that these injuries occupied a prominent place among the claims of citizens of the United States against Great Britain

for acts committed during the war, for the purpose of passing upon which this commission was instituted.

On the part of the defence it was maintained by Her Majesty's counsel that the proofs in the case showed no state of facts importing any lack of care or diligence on the part of the authorities of Canada in the maintenance of their international obligations. That the persons who committed the acts complained of at Saint Albans did not enter the States from Canada in a body, nor with any military array or equipment; that they passed over the lines from Canada individually or in small parties, with the appearance and in the manner of ordinary travellers; that the authorities of Canada had no reason to suppose them engaged in a hostile expedition against the United States, and that no grounds existed for their arrest or detention by those authorities; that there was nothing in their appearance or movements to excite suspicion; that the Government of the United States had, in 1862, voluntarily annulled its own passport regulations which had previous to that time required all persons coming from Canada into the United States to be provided with passports countersigned by the United States consul-general at Montreal; and that from that time until after the Saint Albans raid there was no regulation interfering with the free and ordinary passage of travellers across the line. That the degree of diligence contended for by the counsel for the claimants would have required of the Canadian authorities a careful examination of every person travelling from Canada to the States as to his character and objects, and would, in effect, have abolished the free intercourse between the provinces and the States which had existed under the full assent and approval of both governments. That from the diplomatic correspondence between the two governments it appeared that the United States had never preferred a claim of pecuniary liability against Great Britain on account of this raid; but, on the contrary, the American Secretary of State, Mr. Seward, had on different occasions expressed his satisfaction with the action of the Canadian authorities, and had particularly expressed through the British legation his thanks to Lord Monck, the governor-general, for the assistance rendered by the Canadian authorities toward the detection and arrest of the offenders. That in the protocols to the treaty, in the four preliminary notes between Mr. Secretary Fish and Sir Edward Thornton, on the subject of the formation of the Joint High Commission which framed the treaty, and by the confidential memorandum or brief sent by Secretary Fish to General Schenck of that commission for the information and guidance of himself and colleagues, there was no allusion to the Saint Albans raid, much less to any claims on the part of the United States growing out of the acts committed or omitted by the British government in relation thereto. That the only explanation that could be given of this omission was that the Government of the United States did not consider itself entitled to make any international demands in the premises. That in fact the

proofs failed to show that the raid was organized in Canada; that the raiders procured arms or ammunition there, or did any other act within Her Majesty's dominions in violation of her just neutrality, which was known to, or with due diligence might have been known to, the Canadian authorities. That, on the contrary, the evidence strongly tended to show that the raid was in fact organized within the United States, and that no act compromising British neutrality was committed by the raiders. That no liability was shown by the evidence, and none was claimed by the claimants' counsel to exist against Great Britain by reason of the omission alleged in the memorials of the Canadian authorities to surrender the raiders under the extradition treaty. That the acts of the raiders were belligerent acts, and as such afforded no ground for extradition.

Her Majesty's counsel cited the opinion of Count Sclopis in the tribunal at Geneva; also, 1 Phillimore, 230 to 232.

The commission unanimously disallowed all the claims.

Mr. Commissioner Frazer read an opinion, in which I am advised that the majority of the commission concurred, as follows:

I may not be prepared to say that Great Britain used that diligence to prevent hostile expeditions from Canada against the United States which should be exercised by a neutral and friendly neighbor; but in the view which I take of these claims this question is not important, and need not, therefore, be decided.

The raid upon Saint Albans was by a small body of men, who entered that place from Canada without anything to indicate a hostile purpose. They came not in an organized form, so as to attract attention, but apparently as peaceable individuals travelling by railroad and not in company, and stopped at the village hotels. That there was a preconcerted hostile purpose is unquestionable, but this was so quietly formed, as it could easily be, that even at this day the evidence does not disclose the place, the time, nor the manner. The Government of the United States was at the time diligent, by means of its detectives, to know what mischievous expedition might be organized by rebels in Canada, but it failed to discover this one until after it had done its work. Such was the secrecy with which this particular affair was planned, that I cannot say it escaped the knowledge of Her Majesty's officers in Canada because of any want of diligence on their part which may possibly have existed. I think rather it was because no care which one nation may reasonably require of another in such cases would have been sufficient to discover it. At least the evidence does not satisfy me otherwise.

The Lake Erie raid.

Walter Oliver Ashley vs. Great Britain, No. 19.

This case was, in general character, and in most of the circumstances accompanying it, analogous to the cases growing out of the Saint Albans raid above reported. The evidence on each side in the Saint Albans raid cases was invoked into this case; and the case was argued, submitted, and decided in connection with those cases.

The memorial alleged that some months prior to September, 1864, confederate refugees, domiciled or commorant in the provinces of Canada, there planned and organized a warlike enterprise of forcibly appro-

priating steamers of the United States on Lake Erie, and using them for the capture of the United States war-steamer Michigan, then stationed on Lake Erie. That by such capture, the plan contemplated the release of some 3,000 confederate prisoners confined on Johnson's Island, in Lake Erie, near the American shore; and also to obtain control of the lakes and power to destroy and pillage the cities of the United States bordering thereon. That the existence of the plan for such expedition was known to the Canadian authorities for many months before September, 1864, and that such knowledge was communicated by the governor-general of Canada, in November, 1863, to Her Majesty's minister at Washington, who communicated it to the War Department of the United States, but that no steps were taken by Her Majesty's government for said provinces to prevent the execution of the plan.

That on the 19th of September, 1864, about thirty confederate soldiers came on board the steamer Philo Parsons, a private freight and passenger vessel of the United States, at certain Canadian ports, with concealed weapons shipped as freight, the vessel being then on her regular trip from Canadian ports to Sandusky, Ohio. That immediately after the vessel had crossed the boundary-line between the Canadian provinces and the States, this party rose with arms upon the crew, took forcible and armed possession of the vessel, making prisoners the officers and crew, threw overboard and destroyed a large quantity of the cargo, seized the money of the claimant, an officer and part owner of the vessel, shaped the course of the vessel for the war-steamer Michigan, and on their way overhauled, seized, and sunk in American waters another private steamer of the United States, the Island Queen, but, failing to receive expected signals, abandoned their project of capturing the Michigan, raised the confederate flag upon the Philo Parsons, changed her course, and proceeded toward Sandwich, in Canada. That on arriving at Sandwich on the 20th of September, they plundered the Philo Parsons while lying in British waters, landed their booty in the province of Canada, sunk or partially sunk the steamer, and retreated in a body within the province of Canada with the plundered property taken from the vessel.

The memorial contained allegations similar to those contained in the memorials in the Saint Albans cases as to the asylum afforded by Canada to the retreating raiders; as to the negligence of the Canadian authorities in failing to prevent the expedition, and also in failing to take proper steps in apprehending the raiders and surrendering them under the extradition treaty, and in restoring the property captured and carried off by them.

The claimant claimed himself the assignee of all the other owners and claimed damages in the premises, \$16,093.

The evidence in the case sustained the allegations in the memorial as to the circumstances of the capture and destruction of the vessels

named, and the seizure of the property alleged, and as to the assignment of the claims of other owners to the claimant.

Upon the question of due diligence by the Canadian authorities, the claim was rested on both sides substantially on the evidence taken in the Saint Albans cases, and the arguments of the respective counsel upon this question were substantially those urged in the Saint Albans cases, with the additional point, urged on behalf of the defence, that the Canadian government had promptly given notice to the Government of the United States of the information received by them as to the contemplated raid, thereby putting the United States Government fully upon its guard.

The claim was unanimously disallowed.

The Calcutta saltpetre cases.

Frederick T. Bush and others *vs.* Great Britain, No. 11.

Thomas B. Wales and others *vs.* same, No. 12.

Richard P. Buck and others *vs.* same, No. 16.

Curtis & Peabody *vs.* same, No. 18.

These claims were all of substantially the same character, arising on the same state of facts, and were heard on the same proofs and arguments.

The claimants in No. 11 were the owners of the American ship *Daring*; those in No. 12, of the American ship *Templar*; those in No. 16, of the American bark *Patmos*, and those in No. 18, of a portion of the cargo of the *Daring*, consisting of linseed, saltpetre, jute, and gunny-bags.

The three vessels above named were, on the 27th December, 1861, in the port of Calcutta, in British India. The *Daring* had at that date taken on board a quantity of saltpetre, as part of her cargo, obtained a clearance therefor, and had paid the export duty thereon. After that date she completed the taking in of the remainder of her cargo, consisting of linseed, jute, &c., but including no saltpetre, and was completely laden on the 3d January, 1862.

The *Templar* had her cargo all on board, including a quantity of saltpetre, on the 27th December.

The *Patmos* also was fully laden, including 2,000 bags of saltpetre, on the 27th December.

On the 30th November, 1861, the following proclamation was issued by Her Britannic Majesty :

BY THE QUEEN—A PROCLAMATION.

VICTORIA R.

Whereas in and by a certain statute made and passed in the Parliament held in the sixteenth and seventeenth years of our reign, and intituled "The Customs Consolidation Act, 1853," it is, amongst other things, declared and enacted as follows; that is to say :

"The following goods may, by proclamation or order in council, be prohibited either to be exported or carried coastwise: Arms, ammunition, and gunpowder, military and naval stores, and any articles which Her Majesty shall judge capable of being converted into or made useful in increasing the quantity of military or naval stores, provisions, or any sort of victual which may be used as food by man; and if any goods so prohibited shall be exported from the United Kingdom or carried coastwise, or be water-borne to be so exported or carried, they shall be forfeited."

And whereas we have thought fit, by and with the advice of our privy council, to prohibit either to be exported or carried coastwise the articles hereinafter mentioned, (being articles which we judge capable of being converted into or made useful in increasing the quantity of military or naval stores,) we, therefore, by and with the advice of our privy council, and by this our royal proclamation, do order and direct that, from and after the date hereof, all gunpowder, saltpetre, nitrate of soda, and brimstone, shall be, and the same are hereby, prohibited either to be exported from the United Kingdom or carried coastwise.

Given at our court, at Windsor, this thirtieth day of November, in the year of our Lord one thousand eight hundred and sixty-one, and in the twenty-fifth year of our reign.

God save the Queen.

On the 27th December, 1861, the following ordinance was promulgated by the governor-general of India:

LEGISLATIVE.

The following ordinance, passed by the governor-general of India on this date, is hereby promulgated for general information:

ORDINANCE.

AN ORDINANCE to prohibit the exportation of saltpetre, except in British vessels bound to the ports of London or Liverpool, passed by the governor-general of India, under the provisions of 24 and 25 Vic., cap. 67, on the 27th December, 1861.

Whereas information has reached the governor-general by public telegraph that the exportation of saltpetre from the United Kingdom has been interdicted by royal proclamation, and it is, therefore, expedient that the exportation of saltpetre from India, except in British vessels bound to the port of London or to the port of Liverpool, should be prohibited: It is ordered as follows:

I. Until the governor-general, in council, shall otherwise order, it shall not be lawful for any person to export saltpetre from any port of Her Majesty's territories in India, except in a British vessel bound either to the port of London or to the port of Liverpool.

II. If any person shall attempt to export saltpetre, contrary to the provisions of this ordinance, the same shall be seized and confiscated.

III. No collector or other officer of the customs shall after this date grant a pass or permit for the exportation, or shipment for exportation, of saltpetre from any port of the said territories, except in a British vessel bound for the port of London or for the port of Liverpool.

IV. Nothing in this ordinance shall extend to any saltpetre shipped prior to this date, or to any saltpetre for the exportation or shipment whereof a permit or pass has been granted on or before this date.

W. GREY,

Secretary to Governor of India.

On the 3d January, 1862, the following notification was issued and additional ordinance was promulgated by the governor-general of India:

NOTIFICATION.

FORT WILLIAM, *January 3, 1862.*

Whereas it is declared by the ordinance passed by the governor-general of India, on the 27th December, 1861, that until the governor-general, in council, shall otherwise order, it shall not be lawful for any person to export saltpetre from any part of Her Majesty's territories in India, except in British vessels bound either to the port of London or to the port of Liverpool; and whereas it appears from instruction since received from Her Majesty's government that the prohibition to export saltpetre from India, so far as regards British vessels is to apply only to such vessels when bound to ports not within the United Kingdom, the governor-general, in council, is pleased to order, accordingly, that it shall be lawful to export saltpetre on British vessels bound to any port of the United Kingdom, anything in the said ordinance notwithstanding.

By order of the governor-general, in council.

W. GREY,

Secretary to the Government of India.

LEGISLATIVE.

JANUARY 3, 1862.

The following ordinance, passed by the governor-general of India, on this date, is promulgated for general information:

AN ORDINANCE to prohibit the exportation of saltpetre, except in British vessels bound to the United Kingdom, passed by the governor-general of India, under the provisions of 24 and 25 Vic., c. 67, on the third of January, 1862.

Whereas in a dispatch from the secretary of state for India, dated the third December, 1861, the instructions of Her Majesty's government have been received by the governor-general, in council, to take immediate measures for preventing the exportation of saltpetre from India, except in British vessels bound for the ports in the United Kingdom, and to cause any saltpetre which, previously to the receipt, and contrary to the conditions of the said instructions, may have been placed on board vessels still in port, to be re-landed; and whereas, in consequence of the said instructions, the governor-general, in council, has this day ordered that it shall be lawful to export saltpetre on British vessels bound to any port of the United Kingdom, anything in the ordinance of the governor-general the 27th December, 1861, notwithstanding; and whereas it is expedient to make further provision for giving effect to the instructions now received from Her Majesty's government: It is, therefore, ordered as follows:

I. Until the governor-general, in council, shall otherwise order, it shall not be lawful to export saltpetre from any part of Her Majesty's territories, except in a British vessel bound to a port of the United Kingdom.

II. All saltpetre which previously to the promulgation of this ordinance may have been placed for exportation on any vessel still being within a port of Her Majesty's territories in India, and not being a British vessel bound for a port of the United Kingdom, shall be re-landed.

III. No collector of customs or other officer shall grant a port-clearance to any vessel having on board saltpetre, other than a British vessel bound for the United Kingdom.

IV. If any person shall attempt to export saltpetre contrary to the provisions of this ordinance, the same shall be seized and confiscated.

V. Any custom-house officer may without warrant seize saltpetre liable to confiscation under this ordinance.

W. GREY,

Secretary to the Government of India.

The vessels in question having their cargoes on board, and their masters believing that the prohibition would be but temporary, it was not deemed expedient to unload the saltpetre which lay, in each case, at the bottom of the hold, thus requiring the unloading of the entire cargo; and the vessels accordingly remained in port at Calcutta until 28th February, 1862, on which day the several ordinances prohibiting the exportation of saltpetre were revoked. They were respectively ready to sail with their cargoes, but for the prohibition, on the 3d, 8th, and 20th days of January, respectively; and the claim in each case was for demurrage from the time the vessels were respectively ready to sail until permitted to sail by the revocation of the ordinances, it being averred in each case that the demurrage thus claimed was less than the expense of unloading the cargo would have been.

The masters of the respective vessels duly protested before the United States consul-general at Calcutta against the prohibition of exportation of saltpetre, and against the detention of their vessels by occasion thereof, claiming their damages for the demurrage. The claims were, during the year 1862, made the subject of diplomatic correspondence between the two governments, the United States claiming compensation on behalf of the parties aggrieved, and the British government vindicating the legality of the ordinances and of the prevention of the sailing of the vessels with the saltpetre on board during the continuance of such ordinances.

The provisions of the statute of 16th and 17th Victoria, under which the royal proclamation was issued, and upon which the ordinances of the governor-general were founded, are recited in the royal proclamation above given. The convention between the United States and Great Britain of July 3, 1815, continued by the conventions of 20th October, 1818, and of 6th August, 1827, and in force at the time of the acts in question, are as follows:

ARTICLE III. His Britannic Majesty agrees that the vessels of the United States of America shall be admitted and hospitably received at the principal settlements of the British dominions in the East Indies, *videlicet*: Calcutta, Madras, Bombay, and Prince of Wales' Island; and that the citizens of the said United States may freely carry on trade between the said principal settlements and the said United States, in all articles of which the importation and exportation, respectively, to and from the said territories, shall not be entirely prohibited; provided only, that it shall not be lawful for them, in any time of war between the British government and any state or power whatever, to export from the said territories, without the special permission of the British government, any military stores or naval stores, or rice. The citizens of the United States shall pay for their vessels, when admitted, no higher or other duty or charge than shall be payable on the vessels of the most favored European nations, and they shall pay no higher or other duties or charges on the importation or exportation of the cargoes of the said vessels than shall be payable on the same articles when imported or exported in the vessels of the most favored European nations.

But it is expressly agreed that the vessels of the United States shall not carry any articles from the said principal settlements to any port or place, except to some port or place in the United States of America, where the same shall be unladen.

It is also understood that the permission granted by this article is not to extend to allow the vessels of the United States to carry on any part of the coasting trade of the said British territories; but the vessels of the United States having, in the first instance, proceeded to one of the said principal settlements of the British dominions in the East Indies, and then going with their original cargoes, or part thereof, from one of the said principal settlements to another, shall not be considered as carrying on the coasting trade. The vessels of the United States may also touch for refreshment, but not for commerce, in the course of their voyage to or from the British territories in India, or to or from the dominions of the Emperor of China, at the Cape of Good Hope, the island of St. Helena, or such other places as may be in the possession of Great Britain in the African or Indian seas; it being well understood that in all that regards this article the citizens of the United States shall be subject, in all respects, to the laws and regulations of the British government from time to time established.

The proclamation and ordinances in question were promulgated by occasion, and in view of the arrest on the high seas of the British mail-steamer *Trent*, and the taking from that vessel of Messrs. Mason and Slidell, agents and emissaries of the confederate government, by a vessel of war of the United States, and in the apprehension of probable hostilities between the United States and Great Britain on account of such arrest and seizure.

On the part of the claimants it was contended that, irrespective of treaty stipulations between the United States and Great Britain, the proclamation and ordinances were in effect an embargo on saltpetre-laden vessels bound for non-British ports, at least during the time it would take to unlade the saltpetre; that it was a civil, as distinguished from a hostile, embargo, not directed against vessels of the United States exclusively, but as a husbanding of resources merely, though in anticipation of probable hostilities, and thereby having some features of a hostile embargo; that even in the case of a hostile embargo, if war does not ensue, innocent sufferers have a just claim for indemnity, recognized by international law and practice; that *a fortiori* there is always a just claim for indemnity by sufferers in the case of a civil embargo; that the fact that the embargo was justified by the municipal law of Great Britain did not relieve that government from liability under international law; that the action of the American commander in the arrest of the *Trent*, and the seizure and removal of the two passengers named, were not justified by his instructions, and were subsequently disavowed by his government, and therefore no international wrong was ever committed by the United States; and that, therefore, such action afforded no justification of measures by the British government in anticipation of war, even if the measures in question would have been justified by the emergency, if the acts of the officer had been avowed by his government; that if the royal proclamation and the ordinances were not to be considered as constituting an embargo, but only a matter of domestic and police regulation, they certainly constituted a violation of the rights of friendly foreigners, and involved liability for compensation; and that, in the case of the *Daring*, the ordinance of the 27th December having clearly given her the right to sail with the cargo already loaded, this permission, with the subse-

quent acts done and expense incurred by her owners on the faith thereof, in continuing to lade their cargo on top of the saltpetre, in reliance on the ordinance, constituted a contract, and entitled the vessel to the observance of that contract by the Indian authorities.

Under the treaty between Great Britain and the United States, the claimants respectively contended that the right of the vessels in question to sail with the saltpetre on board was guarantied by the terms of the treaty. That "exportation" of saltpetre "from the said territories" was not "entirely prohibited" by the terms of the ordinances, for such exportation was allowed to England. That transportation from India to England was an "exportation from the said territories," and was so recognized by the terms of the proclamation itself, which recited, "it shall not be lawful for any person to *export* saltpetre from any part of Her Majesty's territories in India, except in a British vessel bound either to the port of London or to the port of Liverpool." That the acts in question were plainly not "in time of war between the British government and any state or power whatever." That the language of the treaty providing "that in all that regards this article, the citizens of the United States shall be subject in all respects to the laws and regulations of the British government from time to time established," could not be construed so as to authorize the local authorities to deny rights expressly stipulated for in the treaty, and formed no bar to the right of the claimants to sail with the saltpetre on board their vessels, the same having been lawfully taken on board.

The claimants' counsel cited the *Boedes Lust*, 5 Rob., 246; *Beawes Mer. Law*, 276; *U. S. Stat. at L.*, 381, re-imbursing sufferers from the Bordeaux embargo; *Dana's Wheaton*, p. 4, § 15; p. 373, § 293; 3d *Phill.*, 42; *Honeyman arguendo*, in *Aubert vs. Gray*, 3 B. and S., Q. B., 179; letter of Lord Clarendon to Mr. Dallas, of May 15, 1856, *Br. and Am. Dip. Cor.*; *Gardn. Inst. of Int. Law*, 546.

Her Majesty's counsel maintained that both under international law, irrespective of treaty stipulation, and under the treaty stipulations between the United States and Great Britain, the proclamation and ordinances in question were lawful and valid, and involved no liability for compensation to parties injured by their provisions. That they were general regulations, not directed against the ships or cargoes of these claimants in particular, nor subjecting the ships or commerce of the United States to any discrimination or disadvantage not common to all other foreign nations. That even British ships were subjected to the same disadvantage; and the right of exporting saltpetre to the mother country reserved to them was a right which never had belonged to the United States. That commercial adventures of this character were, in the nature of things, subject to any modification of law which might affect the anticipated profits, and perhaps defeat them altogether. That the ordinances did not constitute an embargo in any just sense, whether hostile or civil. That they were municipal regulations of trade,

not forbidden by any principle known to the law of nations. And that, aside from the treaty between the United States and Great Britain, they were clearly authorized by international law. That a just interpretation of the third article of the convention of 1815 must hold it not to prohibit the British government from regulating the exportation of products of the Indies, from time to time, as might be deemed expedient, or in its discretion from temporarily prohibiting the exportation of some or all of such products to any foreign nation whatever. And that of the occasion of such prohibition and its extent, every nation must of necessity be for itself the sole judge.

That the treaty permitting the trade between the Indian ports and the United States in articles the exportation of which "shall not be entirely prohibited," gave no right to those citizens to export saltpetre at the time in question, the exportation of that article being by the terms of the ordinances entirely prohibited. That the word "exportation" referred to foreign commerce, and not to the transportation from the Indies to the home ports of Great Britain. That the reservation of the right of transportation to such home ports was in no respect prejudicial to the commerce of the United States, they having no right to participate in the trade between Indian ports and the ports of Great Britain. That the treaty itself providing for this trade also provided that the citizens of the United States should be subject in all respects to the laws and regulations of the British government, and thus expressly subjected them to the operation of ordinances like those in question authorized by the statute upon which they were based. That the ordinances of 27th December and 3d January were just, caused by an act of an armed vessel of the United States in violation of international law, and affording a reasonable apprehension of hostilities to ensue between Great Britain and the United States. That in such case all means of protection and self-defense, not in themselves at variance with the ordinary principles of justice, and impartially used, were permissible to every government, and that this prerogative having been exercised *bona fide* for the safety of the realm on a particular emergency by a prohibition equally affecting native subjects and foreign merchants, the latter have no ground upon principles of international right or justice to require compensation for such an unavoidable diminution of their commercial profits.

The commission disallowed all the claims, Mr. Commissioner Frazer dissenting and reading a dissenting opinion, a copy of which will be found in the appendix, E.

Tripp's case.

Josiah Winslow Tripp *vs.* Great Britain, No. 15.

The claimant in this case alleged, in substance, by his memorial that prior to August, 1862, he was lawfully possessed of a certain limestone

quarry and lime-kiln, together with some 1,500 barrels of lime, tools, furniture, &c., on San Juan Island, in the Territory of Washington, belonging to the United States.

That in his absence from the island in August, 1862, his wife was ejected from the premises by one Roberts, a British subject, who took possession of the real estate and appropriated the personal property. That claimant commenced a suit against Roberts in a justice's court of the Territory of Washington to recover the possession of the premises, and obtained judgment for restitution of the property, which was followed by a warrant of restitution for its enforcement.

That Roberts thereupon appealed to Captain Bazalgett, commander of the British forces on the island. That Bazalgett thereupon applied to Major Bissell, commanding the American forces on the island, and that Major Bissell thereupon arrested the claimant and the justice of the peace who had rendered the judgment against Roberts, put them in the guard-house, and shortly after expelled the claimant from the island.

That in April, 1864, the claimant returned to the island, and finding his claim vacant, took possession of the same, providing a new stock of tools and supplies, and commenced to work the quarry ; but after ten days spent in it, was again forcibly removed by command of Captain Bazalgett, put in the guard-house, detained two weeks, and then banished from the island and forbidden ever to return.

The memorial alleged the value of the quarry at \$50,000, and claimed damages by occasion of the premises \$100,000.

Evidence was taken on the part of the claimant tending to sustain his allegations as to his possession of the property and removal therefrom.

At the time of the acts alleged the title of the island of San Juan was in dispute between the United States and Great Britain, and the island was occupied by a joint military force of the two governments under an arrangement made between them for such joint occupancy, by which the citizens and subjects of each government were made amenable to the authorities of their own government only.

Pending the case before this commission, His Majesty the Emperor of Germany, to whom the decision of the question was referred by the treaty of 8th May, 1871, decided the island to be the property of the United States.

The proofs filed on the part of the defence showed that the arrest of Tripp and his expulsion from the island were by order of the commander of the United States forces upon the island, and not through any assumption of authority on the part of the commander of the British forces.

The claimant filed an argument admitting that the arrest and order of banishment on each occasion came from the American commander, but claiming that it was on the complaint of the British commander, who represented his own government and made unfounded charges

against the claimant, which were the cause of his arrest and banishment, and that by reason thereof the British government was liable to his reclamation for damages.

The commission, without hearing any argument for the defense, unanimously disallowed the claim.

Hubbell's case.

William Wheeler Hubbell *vs.* Great Britain, No. 17.

The memorial of the claimant alleged, in effect, that prior to the 1st of July, 1844, the claimant was the inventor of a certain improvement in breech-loading fire-arms, for which letters patent were issued to him by the United States, dated 1st July, 1844.

That in the year 1844 the British government, through Her Majesty's consul at Philadelphia, ordered of the claimant two specimen guns made under the claimant's invention and patent, which were thereupon procured to be made by the claimant, and furnished through the consul to Her Majesty's government in 1845, and paid for by that government.

The memorial further alleged that "it was understood and agreed that the invention of said mechanical principle" of the claimant "should be paid for by Her Majesty's government whenever it should be determined upon for adoption in Her Majesty's service." That after the receipt of the specimen guns, in 1845, it was determined by Her Majesty's government, in the same year, that it was not expedient to adopt them for use, but that subsequently, on the 14th March, 1865, Her Majesty's government made "a full determination of adoption in Her Majesty's service of breech-loading fire-arms" known as the Snyder Enfield rifle, containing and embodying the mechanical principle covered by the claimant's invention and patent; and that after such official "determination of adoption," in March, 1865, Her Majesty's government issued to Her Majesty's army and navy 500,000 muskets of the pattern named and covered by the invention and patent of the claimant.

The claimant claimed a royalty of \$1 each upon these muskets, amounting to \$500,000, besides interest.

A demurrer was interposed by Her Majesty's counsel to the memorial, on the ground that the commission had no jurisdiction of the claim stated in the memorial, and that the memorial alleged no sufficient ground of claim against Great Britain, in that—

1. The claim was based upon a contract, express or implied, which was not a claim within the terms or intent of the treaty, not being a claim "arising out of acts committed against the persons or property of citizens of the United States."

2. That if such claim on contract were within the jurisdiction given by the treaty, the claimant could have no standing before the commission as an international tribunal until he had exhausted the remedies in

all the municipal courts of Great Britain, and until justice had been denied him by such tribunals *in re minime dubia*.

3. That the facts alleged in the memorial established no such contract as claimed by the claimant for the payment of a royalty upon guns subsequently used and covered by his invention.

4. That no act of Her Majesty's government was alleged as happening within treaty time, except the "full determination of adoption" alleged to have been made in March, 1865, and that this was not an act committed against the property of the claimant.

5. That the claimant did not appear to have had any property in his alleged invention in England, and that his property in the invention in the United States had expired prior to March, 1865, and was open to the whole world.

On hearing on the demurrer, the claim was unanimously disallowed by the commission.

V.—CLAIMS OF SUBJECTS OF HER BRITANNIC MAJESTY AGAINST THE UNITED STATES.

1.—*Claims for property alleged to have been taken and appropriated to the use of the United States.*

The claims embraced under this head were very numerous, and arose under various circumstances. Most of them may be grouped under the following heads:

a. Those for property in the nature of military supplies, taken by authorized officers for military use, and vouchers given for the same.

These claims arose sometimes within the loyal States, sometimes within the Federal lines, in territory reclaimed from the enemy within the insurrectionary States, and sometimes within the enemy's lines. Among them may be named the case of Thomas Ward, No. 1, which was for cotton taken from the claimant at Wilmington, N. C., shortly after the capture of that city by the Federal forces, and appropriated for the use of the United States hospital.

On the part of the United States it was contended that the claimant, being a resident of North Carolina, was, by domicile, an enemy of the United States. He was found in a town captured by them, and his property was liable to levies and contributions for their benefit.

The voucher given was in the following words:

OFFICE PROVOST-MARSHAL GENERAL,
Wilmington, N. C., March 3, 1865.

Received of Thomas Ward, two bales of cotton.

P. C. HAYES,
Lieut. Col. and Provost-Marshal General, U. S. A.,

and was accompanied by a certificate of an assistant surgeon that the cotton was used for beds in the hospital.

The award of the commission, in which all the members joined, was as follows :

Without expressing any opinion on the effect to be given to the evidence of Thomas Ward and Sarah Ward, the commissioners are of the opinion that the receipts and vouchers given by acknowledged officers of the Army *at the time*, show that the cotton was taken from the claimant for the use of the United States. This we think sufficient, in the absence of all countervailing proof, to show the taking by the United States. Nothing appears to indicate that it was taken as enemy's property, and the question of the right so to take is, therefore, not involved. It was taken nine days after the capture of Wilmington, N. C., by the United States, and the possession of the place ever after continued in the United States. We are not, upon the facts before us, prepared to hold that, at the time of the taking of the cotton, the place was enemy's territory. We agree, therefore, that the claimant is entitled to compensation for the property, the amount being the average value of cotton usually produced in that neighborhood, with interest at six per cent. per annum until January 31, 1873.

We therefore award that the sum of \$620.44 be paid by the Government of the United States to the government of Her Britannic Majesty in respect of the claim of Thomas Ward.

In the case of John Wilkinson, No. 28, the claim was for beef taken from the claimant on Matagorda Island, Texas, by a commissary of the United States in 1863, and for which vouchers in the usual form were given. The claimant was domiciled and his property situated within the insurrectionary State of Texas, and apparently not within the actual military lines of the United States at the time of the taking. The vouchers were all signed by an authorized officer, and recited, "I have taken for military purposes from John Wilkinson," the property described, and that the same was necessary for the public service, and would be accounted for in the officer's monthly returns.

On the part of the United States it was claimed that the taking was a capture under the right of war, and that no liability for payment arose against the United States.

An award was made in favor of the claimant, in which all the commissioners joined.

The same principle was applied in all other cases of like character.

b. Claims for property taken under the command of authorized officers of the United States for military use, whether in the loyal States or within those portions of the insurrectionary States permanently occupied by the Federal forces, or within those portions of the insurrectionary States not so reclaimed by the United States, and for which property no voucher was given.

The claim of Jonathan Braithwaite, No. 31, was for a horse taken for cavalry use in Kentucky, a loyal State, in 1864.

On the part of the United States it was contended that the claimant, being domiciled in Kentucky, had precisely the same remedy for property taken for public use, as citizens of the United States residing within the loyal States; that the laws of the United States afforded him the

proper means of securing compensation before the proper bureau of the War Department, and that the case was not one for international reclamation.

The commission gave an award in favor of the claimant, in which all the commissioners joined.

In the case of Samuel Brook, No. 99, the claim was for certain tarpaulins taken by an authorized officer for the use of the United States, at Memphis, Tenn., in June, 1862, shortly after the capture of that city by the Federal forces.

An award was made in favor of the claimant, Mr. Commissioner Frazer dissenting upon the question of the sufficiency of proofs, but the commissioners all agreeing as to the principle involved.

It may be stated generally that the commission were unanimous in the allowance of claims for property coming under this head when taken within the loyal States or within those portions of the insurrectionary States permanently occupied by the Federal forces, except when something in the nature of the property or in the conduct of the claimant took him out of the condition of neutrality. Thus, for instance, in the case of Robert Davidson, No. 66, the claim was for gun-carriages and other artillery apparatus, manufactured by the claimant for the use of the confederate government, and remaining in his possession at the surrender of New Orleans, together with material for use in the same manufacture, which was taken and appropriated by the Federal forces, under the orders of General Banks, some months after the capture of New Orleans. The claim was unanimously disallowed.

Where, however, the taking of the property by the Federal forces and the domicile of the claimant were within the enemy's lines, or in those portions of the enemy's country not reclaimed from the enemy, the majority of the commission, on satisfactory evidence that the property was taken by authority, or actually appropriated to military use, made awards in favor of the claimants, Mr. Commissioner Frazer dissenting, on the ground that one domiciled in the country of the enemy was himself an enemy in law, whether an actual enemy or not; and by well-settled principles of public law his sovereign had no right in such cases to intervene in his behalf against the ordinary treatment of him as an enemy. In the principle thus held by Mr. Commissioner Frazer, I am advised that the presiding commissioner agreed; but in view of the fact that the United States had, by the establishment of the Southern claims commission, made provision for the compensation of its own citizens domiciled within the enemy's country "who remained loyal adherents to the cause and the Government of the United States during the war," for property taken in like manner, (16 Stat. at L., 524, § 2,) he was of opinion that neutral aliens in like situation should be entitled to the same degree of compensation, and, if British subjects, to a standing before the commission for that end.

Upon this question Mr. Commissioner Frazer held that any provision made for the payment of such claims to citizens was not in discharge of an obligation imposed by the public law, but was a matter of favor, and could carry with it no obligation on the part of the Government of the United States to extend like compensation to others not embraced within the class which it had selected.

In the case, however, of John Kater, No. 19, claimant was allowed for two horses taken by Sheridan's army on its raid through the valley of Virginia in August, 1864, all the commissioners joining in this award, General Sheridan's order of August 16, 1864, directing the seizure of mules, horses, and cattle for the use of the Army, having in effect promised compensation for such property to loyal citizens.

In the case of Henry Henderson, No. 41, the claim was for 112 bales of cotton seized by the United States military forces under orders of General Banks, on plantations in the State of Louisiana, outside of the Federal lines, carried to Port Hudson, and there used in the breastworks of the besieging army of General Banks for the reduction of that post.

On the part of the United States it was claimed that this was a taking of enemy's property within the enemy's country for strictly military use, justified by the laws of war, and for which the United States were not liable to make compensation, the claimant being permanently domiciled in the enemy's country, and subject to the same treatment as other enemies. The claim was allowed by the majority of the commission, Mr. Commissioner Frazer dissenting and placing on the records of the commission a dissenting opinion, a copy of which will be found in the appendix, F.

e. Claims for property alleged to have been taken and appropriated by the United States forces within the enemy's country, not appearing to have been taken under any regular requisition or order for military use, or by command of any authorized officer.

These claims were numerous and of great variety in regard to the circumstances of the alleged taking. It is somewhat difficult to draw the precise line of distinction by which the majority of the commission were guided in their decisions. It may, perhaps, be said generally that the commission (Mr. Commissioner Frazer dissenting) made awards in favor of the claimant whenever it appeared by satisfactory evidence that the property so taken was a legitimate subject of military use and was actually applied to military uses, even though such application was not made through the regular and ordinary channels. On the other hand, where the property was in its nature not a proper subject of military use, or, being such, was not applied to military use, or where the taking appeared to be mere acts of unauthorized pillage or marauding, the claims were disallowed.

In the case of Thomas Stirling, No. 12, were included as well claims for property destroyed by the United States Army in its marches and encampments in the State of Virginia, as for horses, carriages, cattle, hogs, flour, corn, and bacon alleged to have been taken and carried off by the soldiers. The proofs showed nothing beyond the disappearance of the property in the presence of the United States Army. The decision of the commission, in which all the commissioners joined, was made in the following words :

The acts done upon which this claim is based seem to have been the ordinary results incident to the march of an invading army in a hostile territory, with possibly some unauthorized acts of destruction and pillage by the soldiery, with no proof of appropriation by the United States. Under such circumstances there is no ground for a valid claim against the United States. The claim is, therefore, disallowed.

In the case of the Misses Hayes, No. 100, milliners, at Jackson, Miss., a claim was made for a stock of millinery goods and like property, alleged to have been taken by soldiers of the United States Army on the first capture of Jackson, in May, 1863. The acts complained of appeared, if committed by United States soldiers, to have been acts of pillage merely, and the claim was unanimously disallowed.

In the cases of Michael Grace, No. 132, Elizabeth Bostock, No. 133, Thomas McMahon, No. 136, and others, at Savannah, being claims for property alleged to have been taken and appropriated by United States soldiers, the same appeared to have been by acts of unauthorized pillage, and were rejected.

In the cases of Bridget Lavell, No. 130, Ann O'Hara, No. 135, William H. Bennett, No. 137, and William Cleary, No. 220, at Savannah, awards were made, Mr. Commissioner Frazer dissenting, for property taken by the United States forces, though without proof of the intervention of an authorized officer, the property being in the nature of commissary's and quartermaster's supplies, applicable to the proper use of the Army, and actually, though perhaps irregularly, appropriated to Army use.

In the case of David Jacobs, No. 236, large claims were made for watches, jewelry, silks, and other valuable goods, liquors and tobacco, alleged to have been taken by General Sherman's army at Columbia, on the capture of that city, as well as for the destruction of other property by the burning of that city.

An award was made, Mr. Commissioner Frazer dissenting, for the tobacco taken from this claimant, on proof that it was carried off in Army wagons, tobacco being allowed as an Army ration. All the other claims for property taken from this claimant were disallowed.

In the case of Watkins and Donnelly, administrators, No. 329, an award was made against the United States, in which all the commis-

sioners joined, for property pillaged by United States soldiers in the night from a country store in Missouri, a State not in insurrection, upon proof showing great neglect of discipline on the part of Colonel Jennison, the commanding officer, and his neglect and refusal to take any steps for the surrender of the stolen property or the punishment of the offenders when notified of the facts, and that a part, at least, of the stolen property was then in possession of his troops.

d. Claims for the use and occupation of lands and buildings within the loyal portions of the United States, or within those portions of the insurrectionary States permanently reclaimed by the United States, and for damages resulting from such use and occupation.

In the case of James Crutchett, No. 4, claim was made for the use and occupation of a factory building of the claimant in the city of Washington, which was from July, 1861, to the end of the war, occupied by the United States as barracks, quarters, and offices for troops and officers, and also for large resulting damages to the claimant's business by this occupation of the buildings and removal of the machinery, &c.

The proofs showed that the premises were taken possession of by the United States under the right of eminent domain for military use, and that partial payments of the rent had been made to the claimant, who had been for many years domiciled in the city of Washington.

The counsel of the United States filed a demurrer to the memorial, specifying, among other grounds, that the claimant and his property, thus domiciled and situated, were subject to the exercise of the right of eminent domain over the property by the United States; and that for the exercise of such right and the occupation of the property, full compensation could be had by the claimant under the municipal laws and authority of the United States; and that such acts were, therefore, not the subject of international reclamation.

On the argument of the demurrer the counsel for the United States contended that the claimant, domiciled within the United States, was subject to all the burdens and liabilities of other inhabitants of those States, and could claim no better position or superior rights in regard to the United States than a native-born or naturalized citizen of those States. That for the occupation of his premises he was entitled, under the Constitution of the United States, to compensation, and that the Court of Claims had full jurisdiction of the case, and could have afforded him full redress.

The counsel cited the letter of Earl Granville to Mr. Stewart, (No. 23 of parliamentary papers, No. 4, on the Franco-German war, 1871, British state papers;) Professor Bernard's "Neutrality of Great Britain," &c., pp. 440, 454; also, the note of Mr. Abbott (Lord Tenterden) relating to this identical claim of Mr. Crutchett, id., 456; also, the case of William

Cook before the commissioners under the convention of 1853 between the United States and Great Britain, (United States Senate documents, first and second sessions Thirty-fourth Congress, vol. 15, No. 103, pp. 169, 463;) also, the case of the United States *vs.* O'Keeffe, in the Supreme Court of the United States, (11 Wall., 178;) and the cases of Waters, (4 C. Cls. Rep., 390;) Russell, (5 *id.*, 120;) Filor *vs.* United States, (9 Wall., 45;) also, Campbell's case, (5 C. Cls. Rep., 252;) and Provine's case, (*id.*, 455.)

On the part of the claimant it was contended that, while the claimant was entitled to compensation for the use of his property under the Constitution of the United States, the jurisdiction of the Court of Claims in the case was taken away by the act of Congress of July 4, 1864, (13 Stat at L., 381,) citing Filor *vs.* United States, (9 Wall., 45.)

The demurrer was overruled, and an award was subsequently made in favor of the claimant for the value of the use and occupation, in which all the commissioners joined.

The case of William H. Lane, No. 9, was a claim for occupation by the United States of a building of the claimant in Memphis, in 1864; that of Eleanor W. Turner, No. 34, was a claim for like occupation of a house in New Orleans by the United States military authorities; and that of Eliza B. Nelson, No. 140, was a claim for like occupation of a building at Helena, Ark; all said occupations being while the respective places were permanently held by the United States. Awards were made in favor of the claimant in each case, Mr. Commissioner Frazer dissenting in Nos. 34 and 140.

e. Claims for property taken under the abandoned and captured property act of March 12, 1863, (12 Stat. at L., 820.)

This act provided in effect for the turning over of property captured or seized as abandoned by the military and naval authorities of the United States to agents, to be appointed by the Secretary of the Treasury, for the sale of such property, and the payment of the proceeds into the Treasury; and provided that the owner of such property might, within two years after the suppression of the rebellion, bring suit for the proceeds in the Court of Claims, and, on proof of his ownership and right to the proceeds, and that he had never given aid or comfort to the rebellion, should be entitled to recover the net proceeds. The act was undoubtedly intended to apply particularly to cotton and the other staple products of the Southern States. To such products only it was in practice applied.

Many claims were brought before the commission for property, principally cotton, taken under this act. Most of the claims thus brought had been prosecuted in the Court of Claims, some of which were still pending in that court; some were pending on appeal in the

Supreme Court; in some the Court of Claims had given judgment in favor of the claimants for the net proceeds, the claimants now claiming here that such amount was less than the full value of their property, to which they claimed themselves entitled; and in some judgment had gone against the claimant in the Court of Claims, and no appeal had been taken. In some cases the claimants were domiciled within the insurrectionary States, and in others within the British dominions. In a few cases no suit had been prosecuted in the Court of Claims. The agent of the United States interposed demurrers in several cases, including all the different classes above named.

On the argument it was contended for the United States that the right of capture, by a belligerent, of private enemy's property on land was permitted by the laws of war; that that right was specially applicable to the case of a great staple like cotton, upon which the enemy principally depended for his military and naval supplies, and for his credit and means to carry on the war; that by the abandoned and captured property act of 12th March, 1863, the United States had in no respect abandoned or waived this right, but that that act constituted merely an act of grace in favor of individuals who might show themselves personally free from complicity with the rebellion; that under that act neutral aliens stood upon the same footing with loyal citizens, and were entitled to the same rights given to such citizens by the act, and subject only to the same disabilities; that the owner of property thus captured within the enemy's country had no right of reclamation against the United States, except that given by the act, and that that remedy must be pursued in the form given, and before the tribunal specified in the act.

He cited Vattel, book 3, c. 9, §§ 161, 163, 164; Twiss, vol. 2, (war,) pp. 122 to 124; Rutherford, book 2, c. 9, § 16; Mrs. Alexander's Cotton, 2 Wall., 404; the *United States vs. Padelford*, 9 id., 531; the *United States vs. O'Keeffe*, 11 id., 178; 1 Kent's Com., pp. 92, 93.

On the part of Her Majesty's counsel representing the claimants, it was contended—

1. That the personal property of the inhabitants of the insurrectionary States whether citizens or aliens, neither by its locality nor by its character as product of the soil, was the lawful subject of capture as prize and booty of war.

2. That in this respect the article of cotton is not distinguishable from other property.

3. That the Government of the United States has never claimed or asserted title to such personal property as prize and booty of war, but, on the contrary, by legislation has impliedly disclaimed such title.

4. That the property for the destruction or appropriation of which these claimants demand indemnity never ceased to be their property, but continued such, notwithstanding the fact of war and the fact of seizure or appropriation by the military authorities of the United States.

5. That their right to be indemnified for such seizure or appropriation does not depend in any degree upon any municipal legislation of the United States either recognizing the right or providing a remedy complete or partial, but rests upon principles of the public law, recognized as well by the United States as by all other civilized nations.

6. That, therefore, the act of March 12, 1863, neither gave any right which the parties had not before by settled principles of public law, nor purported to give a remedy commensurate with that right under the public law. That act was purely a municipal measure, dictated by considerations of domestic policy.

7. That, therefore, it is wholly immaterial to the determination of these international claims whether those parties had or had not a remedy under that statute, or did or did not avail themselves of such remedy. The Court of Claims in no degree exercised the functions or fulfilled the duties of this tribunal, whose obligations under the treaty and the public law must be discharged according to its own judgment and conscience in cases coming within the treaty, whether the Court of Claims, in executing the act of 1863, exercised or not a wholly distinct jurisdiction conferred upon it by that statute.

8. If under that statute the claimant has obtained a partial indemnity, the United States can only claim a credit for so much of the indemnity as the party has received in that form. In no other way, and to no other extent, can the proceedings in the Court of Claims affect the awards in these cases.

He cited 1 Kent's Com., 91; Mrs. Alexander's Cotton, 2 Wall., 404; United States *vs.* Klein, 13 Wall., 128; United States *vs.* Padelford, *supra*; Brown *vs.* United States, 8 Cranch, 110; Grant's case, (decisions C. Cls., October term, 1863;) Vattel, book 3, c. 5, § 75; c. 7, § 109.

The arguments of the respective counsel were filed in the cases of James B. McElhose, No. 225, and of Thomas Arkwright, No. 302. Many other cases were submitted under the same arguments.

The commission unanimously sustained the demurrers in the cases in which suit had been brought in the Court of Claims, whether still pending in that court, or on appeal, or previously decided, and dismissed those cases.

In the case of Elizabeth Knowles, No. 175, and other cases in which no suit had been brought in the Court of Claims, the commission (Mr. Commissioner Frazer dissenting) overruled the demurrers, and took jurisdiction of the claims upon their merits. Mr. Commissioner Frazer read a written opinion upon the questions involved in these cases, a copy of which will be found in the appendix, G.

2.—*Claims for property alleged to have been wrongfully injured or destroyed by the forces of the United States.*

These claims were also numerous, and involved a large variety of questions. They included claims for property injured or destroyed by the bombardment of towns of the enemy, as in the case of Charles Cleworth, No. 48; and in other ordinary operations of war, such as the passage of armies, the erection of fortifications, as in the case of Trook, administrator, No. 58, &c. Also, claims for property available to the enemy for military purposes, or for the prosecution of the war, and purposely destroyed in the enemy's country as a means of weakening the enemy, as in the cases of Samuel H. Haddon, No. 107, and John Murphy, No. 326. Also, for property incidentally involved in the destruction of public stores, works, and means of transportation of the

enemy, as in the cases of John K. Byrne, No. 200; Charles Black, No. 128, and A. K. McMillan, No. 250. Also, for timber felled in front of forts and batteries to give clear range for the guns and deprive the enemy of cover, as in the cases of Trook, administrator, No. 58, and of William B. Booth, No. 143. For property alleged to have been wantonly and without provocation or military necessity destroyed or injured in the enemy's country, as in the cases of Anthony Barclay, No. 5; Godfrey Barnsley, No. 162, and in the Columbia cases.

In these claims for destruction of property, it may be stated generally that, with very few exceptions, and those mostly insignificant, no awards were made against the United States.

The claims for injuries by bombardment, the passage of armies, the cutting of timber to clear away obstructions, the erection of fortifications, &c., in the enemy's country, were all disallowed by the unanimous voice of the commissioners.

The same may be said of the incidental destruction of innocent property involved in the destruction of public stores and works of the enemy.

In several cases there were allegations of the wanton destruction of property by United States troops, and in some cases satisfactory proof was made of the fact of such destruction by soldiers without command or authority of their commanding officers, and in defiance of orders.

In the case of Anthony Barclay, No. 5, allegations were made of wanton destruction of property, including valuable furniture, china, pictures, and other works of art, books, &c. The proof was conflicting as to whether the injuries alleged were committed by soldiers or not; but if committed by soldiers, it was plainly not only without authority, but in direct violation of the orders of General Sherman. In the award made in favor of Mr. Barclay, I am advised that nothing was included for property alleged to have been destroyed.

Several claims were brought for property alleged to have been destroyed by the burning of Columbia, on the allegation that that city was wantonly fired by the army of General Sherman, either under his orders or with his consent and permission. A large amount of testimony was taken upon this subject, including that of General Hampton and other confederate officers on the part of the claimants, and of Generals Sherman, Logan, Howard, Woods, and other Federal officers on the part of the United States. The claims were all disallowed, all the commissioners agreeing.

I am advised that the commissioners were unanimous in the conclusion that the conflagration which destroyed Columbia was not to be ascribed to either the intention or default of either the Federal or confederate officers. The commission did not pass on the question whether, in case the city had been burned by the order or permission of the com-

manding officer, any liability for resulting losses would have existed against the United States.

The claim of Henry E. and Alfred Cox, No. 229, was for a saw-mill and its motive-power, machinery, &c., destroyed by raiding parties from General Sherman's army, near Meridian, Miss., in February, 1864. The expedition by which the mill was destroyed was sent out by General Sherman for the express purpose of destroying the confederate mills, supplies, railroads, and means of transportation.

The proofs showed that the saw-mill in question had been actually employed in the sawing of railroad-ties for the confederate government, and was available for this and similar purposes.

On the part of the defense it was claimed that the destruction was a lawful act of war.

The claim was unanimously disallowed.

The case of William Smythe, No. 333, was a claim for an iron and brass foundry, machine-shop, and machinery, fixtures, supplies, &c., for same, destroyed by General Sherman in Atlanta, after the capture of that city, and before his advance upon Savannah. The establishment had been employed in the manufacture of shot, shell, and other military supplies for the confederate government.

The claim was unanimously disallowed.

The case of James and Richard Martin, No. 434, was a claim for the value of the British ship *York*, which, in January, 1862, on a voyage in ballast from Valencia, Spain, to Lewistown, Delaware, was alleged to have been driven ashore on the coast of North Carolina, one of the insurrectionary States, and, while there stranded, to have been destroyed by United States cruisers.

The proofs satisfactorily established that the vessel was actually wrecked without intent of her officers, and while on a lawful voyage. An officer of the United States Navy, believing her to have been intentionally beached for the purpose of running in her cargo for the use of the enemy, and that the cargo, with the rigging and furniture of the vessel, was actually available to the rebels, boarded and burned her.

The commission made an award for her value in favor of the claimants, in which all joined.

The case of James A. Macaulay, No. 260, was a claim for certain cotton, the cargo of the steamship *Blanche*, which was alleged to have sailed from the port of Lavaca, Tex., in June, 1862, and on her voyage to Havana to have been pursued by the United States war-vessel *Montgomery*, commanded by Lieutenant Hunter, to have run aground on the coast of the island of Cuba, and, while so aground, to have been boarded by the crew of the *Montgomery*, set on fire, and, with her cargo, totally destroyed.

The case was unanimously disallowed for lack of proof of the material allegations in the memorial.

A large number of claims was brought for cotton destroyed by the United States forces at various points in the insurrectionary States. Among these were the cases of Brown & Sharp, No. 33; John Cairns & Co., No. 39, and several others, for cotton destroyed at Camden, S. C.; of George Collie, No. 458; Christopher Atkinson, No. 380, and others, at Columbia, S. C.; of Samuel Hall Haddon, No. 107, in Screven County, Georgia; of Alexander Collie, No. 376, at Oxford, Ga.; of A. R. McDonald, No. 42; John C. Forbes, No. 300, and others, in Arkansas and Louisiana; and various other claims for like alleged destruction at different points.

In several of these cases the proof was clear and undisputed that the cotton was destroyed under express orders of the commanding officers, and for the purpose of preventing it from falling into the hands of the enemy, and of weakening the resources of the enemy. In other cases questions of fact were in dispute, as to the fact of destruction by the United States forces; as to such destruction, if committed, being by order or authority of any competent officer; as to the title of the claimants to the cotton alleged to have been destroyed; and as to whether the cotton, when destroyed, was within the enemy's country.

The question as to the right of the United States to destroy cotton of private owners in the enemy's country was discussed by the counsel of the United States in his arguments filed in the cases of S. H. Haddon No. 107, and of Brown and Sharp, No. 33; and to some extent in several other cases.

On the same subject arguments were filed by Her Majesty's counsel and by counsel for the respective claimants in the cases of S. H. Haddon, No. 107; Brown and Sharp, No. 33; David Jacobs, No. 236; Martha M. Calderwood, No. 360; John W. Carmalt, No. 89; Wood & Heyworth, No. 103; James Borron, No. 144, and in some other cases.

On the part of the United States it was maintained that a belligerent might lawfully in the enemy's country destroy any property, public or private, the possession or control of which might in any degree contribute to sustain the enemy and increase his ability to carry on the war. That the occasion for such destruction and its extent must always be left solely to the discretion of the invading belligerent, who is of necessity the sole judge as to the requirements of his military position, and of the necessity or propriety of the destruction of property, and of the extent to which such destruction shall be carried. That the actual ownership of such property within the enemy's country by the subjects of a neutral power, whether domiciled within the enemy's country or not, did not relieve such property from its liability to such destruction. That cotton in the insurrectionary States was peculiarly and eminently a legitimate subject for such destruction, from its relation to the enemy's

government, as the great staple from which were derived the principal means of that government for the carrying on of the war, which was the principal basis of its credit, the source of its military and naval supplies, and on which it relied to maintain its independent existence and to carry on the war against the United States. That the control of this staple as to production, sale, and exportation, had been, to a large extent, assumed by that government. That by the laws, military orders, and practice of the Confederate States and their authorities, the destruction of cotton, whenever likely to fall into the hands of their enemies, was enjoined and practiced, and that this practice of the confederate government and its officers had received the express and formal approval of the British government as a legitimate practice under the laws of war.

Proofs were made in the case of Wood and Heyworth, No. 103, (proofs for defense, pp. 16, 20, 24, 37 to 47, 51 to 65,) of the statutes of the confederate government in regard to their control of this staple, and in regard to its destruction when necessary to prevent its falling into the hands of the enemy; of the practice of the confederate government in controlling its production, sale, and exportation; of the acts of its president and other executive and administrative officers in this regard, and of the military orders and practice under the same for its destruction when exposed to capture by the enemy. Other proofs in regard to this practice of destruction by the confederates were made in the cases of James Cumming, No. 94; A. R. McDonald, No. 42, and various other cases.

The counsel for the United States, in his arguments, cited the letter from Earl Russell to Lord Lyons of 31st May, 1862, from the British Blue Book relating to the United States, 1863, vol. 2, p. 33, in which his lordship said:

Mr. Seward, in his conversation with your lordship, reported in your dispatch of the 16th instant, appeared to attribute blame to the confederates for destroying cotton and tobacco in places which they evacuate on the approach of the Federal forces. But it appears to be unreasonable to make this a matter of blame to them, for they could not be expected to leave such articles in warehouses to become prize of war, and to be sold for the profit of the Federal Government, which would apply the proceeds to the purchase of arms to be used against the South.

He cited also Vattel, (Am. ed. of 1861,) pp. 364 to 370, §§ 161 to 173; the case of Mrs. Alexander's cotton in the Supreme Court of the United States, (2 Wall., 404, 420;) and the opinion of Sir Hugh Cairns and Mr. Reilly, given in March, 1865, on the application of the Canadian government, and published in the "Saint Albans Raid," compiled by L. N. Benjamin, Montreal, 1865, page 479, as follows:

Though in the conduct of war on land the capture by the officers and soldiers of one belligerent of the private property of subjects of the other belligerent is not often in ordinary crises avowedly practiced, it is yet legitimate.

In the arguments filed by Her Majesty's counsel in the cases of Brown and Sharp, No. 33, and Samuel H. Haddon, No. 107, it was maintained

that, by the modern law of war and the practice of civilized nations under it, private property of non-combatants on land is exempt from seizure, confiscation, or destruction, and that this principle was fully recognized, in theory at least, by the United States in the exercise of their belligerent rights in the late civil war; that the article of cotton, the property of non-combatants, was no exception to this general principle, this in fact having constituted the great mass of the property the proceeds of which were allowed to be recovered in the Court of Claims; that as to non-combatant citizens the United States recognized the rule of the exemption of their private property from capture and destruction; and that as to neutral aliens, peaceably residing in the United States, upon the faith of treaties of amity and commerce, at least an equally favorable doctrine must be applied; that if, in any case, the capture or destruction of such property became a military necessity, such capture or destruction was accompanied by liability to compensation.

Her Majesty's counsel cited the case of the United States *vs.* Klein, in the Supreme Court of the United States, (13 Wall., 128;) also, the case of Mitchell *vs.* Harmony, in the same court, (13 How., 115;) also, the case of W. S. Grant *vs.* United States, (1 C. Cls., 41;) also, Brown *vs.* United States, (8 Cranch, 110;) also, Lawrence's Wheaton, Part IV, c. 2, pp. 586 to 626, 635*n*, 640*n*; Halleck, p. 546, § 12; Calvo, §§ 434, 436, 443, 444, 450; Vattel, pp. 368-9, § 173.

All the claims for cotton destroyed in the enemy's country, with a single exception, (that of A. R. McDonald, No. 42,) were disallowed by the unanimous voice of the commissioners.

Mr. Commissioner Frazer's views upon the questions involved in these cases are embraced in the opinions given by him in Nos. 41 and 225, heretofore referred to, and to be found in the appendix, F and G.

In the case of A. R. McDonald, Nos. 42 and 334, the commission made an award in favor of the claimant, Mr. Commissioner Frazer dissenting. In that case the cotton was alleged to have been purchased by the claimant principally in Ashley County, Arkansas, under permits issued by the proper officers of the United States Treasury, under the statutes regulating trade in the insurrectionary States, and the regulations of the Secretary of the Treasury made pursuant to said statutes, and to have been destroyed in the same region by United States forces under the command of General Osband, in February, 1865. These statutes and regulations only authorized trade in the insurrectionary States within the lines of military occupancy of the United States forces; and it was contended on the part of the claimants that the issuing of such permits by the Treasury officers was controlling evidence that the region covered by the permits, and within which the cotton was alleged to have been purchased and destroyed, was actually within the military lines of the United States.

On the part of the United States it was claimed that the evidence conclusively showed that at the time of the issuing of the permits in

question, and of the alleged purchases under the same, as well as at the time of the alleged destruction, the region where the cotton was situated was entirely outside the lines of military occupancy of the United States, and within the control, civil and military, of the confederate government; that the permits in question were irregularly and unlawfully issued; that they gave no authority to the claimant to purchase within the district in question; that the cotton was purchased, if at all, within the enemy's country, and under collusive arrangements between the claimant and the confederate cotton bureau; that the permits, even if valid when issued, afforded no protection to the cotton when actually within the enemy's lines at the time of its destruction; that the claimant, by his unlawful dealings with the enemy, had forfeited any possible right which he might have had under his alleged permits, and that the claim was, to a large extent, fraudulent, both as to the alleged purchase and destruction.

The entire claim of this claimant amounted, including interest, to over \$3,000,000. The award was for the sum of \$197,190, including interest. I am advised that, in the making of this award, the majority of the commission did not intend to depart from the principle held by them in the other claims for cotton destroyed; but that they regarded the permits as controlling evidence that the region where the cotton was situated was within the lines of Federal occupancy.

The case of John Turner, No. 44, included a claim for a dwelling-house of the claimant, situated near the field of Fair Oaks, in Virginia, alleged to have been for several weeks occupied as a hospital by the army of General McClellan, in the spring of 1862. It was alleged by the claimant that large stores of medicines and hospital supplies had accumulated in this house, and that upon the retreat of General McClellan's army, it being impossible to save the stores so accumulated, the dwelling-house was burned, with its contents, by the Federal officers, in order to prevent these stores from falling into the hands of the enemy. The proofs substantially sustained these allegations.

An award was made in favor of the claimant, in which I am advised that the majority of the commission included an allowance in respect of the destruction of the house in question. Mr. Commissioner Frazer joined in the award; but in his computation of amount included nothing for the house. In no other case was any award made for the mere destruction of buildings within the insurrectionary territory not permanently reclaimed to the possession of the United States; and this award was therefore an exceptional one, and not within the principle by which the commission was governed in other cases.

The cases of A. R. McDonald, Nos. 42 and 334; of John Turner, No. 44; and of J. & R. Martin, No. 434, were the only cases in which awards were made for the mere destruction of property within the insurrectionary States.

3.—*Claims for property alleged to have been destroyed by the rebels.*

In the case of John H. Hanna, No. 2, the memorial alleged in effect that the claimant was the owner of 819 bales of cotton, situated within the rebel States of Louisiana and Mississippi, and that "without fault of petitioner, against his consent, and by force and arms, said cotton was destroyed by rebels in arms against the Government of the United States prior to the year 1863." By the schedules annexed to his memorial and made a part of the same, it appeared that the cotton in question was destroyed by orders of the authorities of the Confederate States and of the rebel State of Louisiana, for the purpose of preventing the same from falling into the hands of the Federal forces.

A demurrer to the memorial was interposed on behalf of the United States.

On the argument of the demurrer it was contended by Her Majesty's counsel, on behalf of the claimant, that the acts of destruction alleged in the memorial appearing to have been deliberately committed under the orders of the commander of the forces of the Confederate States, and with the concurrent authority of the governor of the State of Louisiana and commander of the troops of that State, reclamation must lie on behalf of the British government, in the interest of the claimant as a subject of that government, against the United States as representing and including the State of Louisiana, as well as all the other States forming the so-called Confederate States; that the persons engaged in these acts of destruction were not liable, either civilly or criminally, either for reparation or punishment in respect of those acts, they having been committed in the course of military operations under the authority of the existing government, whether lawful or usurped.

That for the wrongful acts of the several States in respect to foreign nations or their subjects, reclamation could be made only against the United States, to the Government of which, by its Constitution, was reserved the power of making treaties, declaring war, and making peace, and all international powers generally, the same being denied to the individual States; that no foreign nation could negotiate with or make demand upon individual States in respect of such acts, but could deal only with the Government of the United States; that in case of wrongs committed by any State upon foreign nations, in regard to which that State, if wholly independent and not a member of the Federal Union, would be liable to reclamation, and to be called to account in the mode practiced between nations—by treaty or by war—these remedies against such State being denied to foreign powers by the Constitution of the United States, the liability for reparation devolved upon the United States, and the Federal Government must be held to answer as well for the acts of the authorities of its several constituent States as for those of the Federal Government.

That the so-called secession of the State of Louisiana and the other States forming the so-called Confederate States did not extinguish or

suspend the liability of the United States for wrongful acts committed by said States.

That by the treaties of 1794, 1815, and 1827, the United States had stipulated with Great Britain for the protection of her subjects in the State of Louisiana, as well as in all other territory of the United States; that the United States not having allowed the claim of Louisiana to be released from her constitutional obligations and restrictions, but having held her to her constitutional obligations, and having insisted that their political relations with foreign powers were in no wise affected by the insurrection in the Southern States, and that the Government of the United States was rightfully supreme in Louisiana and the other States in rebellion, and having finally maintained its authority over those States, its liability to Great Britain for violation of these treaties by those respective States remained precisely as if there had been no insurrection or civil war.

Her Majesty's counsel further contended that, as a principle of international law, if the rightful government of a country be displaced and the usurping government becomes liable for wrongs done, such liability remains, and devolves on the rightful government when restored; that this principle equally applied when the usurpation was only partial; that the restored and loyal government of Louisiana was liable for wrongs done by the insurrectionary government of the same State; and that it was only by the provisions of the Constitution of the United States that the State of Louisiana was prevented from being compelled to discharge that liability toward foreign governments, and that on this ground the Government of the United States must be held responsible for the acts of the State of Louisiana.

He cited in support of these propositions the treaties of 1815 and 1827 between the United States and Great Britain, (8 Stat. at L., p. 228, art. 1; *id.*, 361, art. 1;) Phillimore, vol. 1, pp. 36, 94, 139; Wheaton, p. 77; Constitution of the United States, art. 1, sec. 10; Works of Daniel Webster, vol. 3, p. 321; *id.*, vol. 6, pp. 209, 253, 265; U. S. Att. Gen. Op., vol. 1, p. 392; *The United States vs. Palmer*, 3 Wheat., Sup. Ct. R., 210; *The Collector vs. Day*, 11 *id.*, 113, 124 to 126; *The Prize Cases*, 2 Black, 635; the treaty between the United States and Great Britain of August 9, 1842, (8 Stat. at L., 575, art. 5;) and the acts of Congress of December 22, 1869, (16 Stat. at L., 59, 60,) and of April 20, 1871, (17 *id.*, 13 to 15.)

The argument on behalf of the United States was summed up as follows:

First. That whatever may be the relations of the separate States of the Union to the Government of the United States, it is manifest that no responsibility can attach to the United States for the destruction of the claimant's property under color of the authority of the State of Louisiana, because its destruction was not authorized by any officials representing or authorized to represent or act for the State of Louisiana under the Constitution and laws of the United States. There can be no legitimate officers of a State to constitute its government, except such as have taken an oath to support the

Constitution of the United States. All others are usurpers and pretenders. But, further, a State of the Union has no political existence which can be or has been recognized by Great Britain, except as a part of the United States, in subordination to the National Government. The rebels, who, by usurpation, undertook to act for the State of Louisiana, declared their action to be in behalf of the State, which they claimed as a component part of another and hostile nation.

Secondly. The destruction of the claimant's cotton was done under the order of the commander of a military force engaged in hostilities against the United States, and whose acts Great Britain had recognized as those of a lawful belligerent, having all the rights of war against the United States that any foreign invader could have had. The men professing to act as the local authorities, in concurring in the order of destruction acted as the assistants and allies of the hostile and belligerent power, and subject to its control. It is as absurd to hold the United States responsible in the case of Hanna as it would be to hold France responsible for the destruction of the property of a British subject in the part of France held by the German armies in the late war, on the ground that a French official, at the head of some *arrondissement* or *commune*, might have joined in the order of the German forces for its being done, he having been put in office or retained there by the German forces for the very purpose, and having first renounced his allegiance to France and taken an oath of allegiance to Germany.

The commission unanimously sustained the demurrer in the following award :

The claim is made for the loss sustained by the destruction of cotton belonging to the claimant by men who are described by the claimant as rebels in arms against the Government of the United States.

The commissioners are of opinion that the United States cannot be held liable for injuries caused by the acts of rebels over whom they could exercise no control, and which acts they had no power to prevent.

Upon this ground, and without giving any opinion upon the other points raised in the case, which will be considered hereafter in other cases, the claim of John Holmes Hanna is, therefore, disallowed.

Mr. Commissioner Frazer read an opinion, which will be found in the appendix, H.

This was among the earliest of the decisions of the commission, and it is understood that in consequence of it a large number of claims of similar character awaiting presentation were never presented to the commission.

The cases of Laurie, Son & Co., No. 321 ; Samuel Irvin & Co., No. 322, and Valentine O'Brien O'Connor, No. 404, likewise arose out of property destroyed by the rebels ; but in each of them it was attempted on the part of the claimants to take the case out of the decision in Hanna's case.

In each of the cases it was alleged that the claimant was the owner of tobacco stored in the State of Virginia at the breaking out of the rebellion ; that, early in the year 1861, the ports of Virginia were blockaded under the proclamation of the President of the United States, and before the claimants could remove their property by land, the Congress of the United States, by act of 13th June, 1861, prohibited the transportation of merchandise from Virginia into the loyal States, except under license and permission of the President, and in pursuance of rules to be prescribed by the Secretary of the Treasury ; and that

under the rules prescribed the claimants were unable to remove the tobacco. In the cases of Laurie, Son & Co. and Irvin & Co. it was alleged that the tobacco remained stored in Richmond until the burning of that city by the rebels on the 3d April, 1865. In the case of O'Connor it was further alleged that in April, 1865, claimant sent a vessel from Ireland destined for Richmond, for the purpose of carrying away his tobacco, which vessel arrived at Hampton Roads in June, 1865, but was warned off by a public armed vessel of the United States and compelled to return to Dublin without the tobacco. In this case it was further alleged that a part of the tobacco was destroyed by the conflagration kindled by order of the confederate authorities on the 3d April, 1865; that another portion was destroyed by an accidental fire in March, 1863, but which occurred in consequence of the disturbed condition of affairs then existing in Richmond; that another portion was seized for taxes levied by the confederate government, and another portion used and destroyed by the authorities of the Confederate States for experimental purposes; and it was alleged that all these losses of Mr. O'Connor were solely in consequence of the failure of the United States to maintain and enforce their authority in the State of Virginia, and to suppress the civil and military disorders then existing there.

A demurrer was interposed on behalf of the United States in each of the three cases.

Her Majesty's counsel filed an argument in Nos. 321 and 322, in which he contended that the memorials showed a case where, by the acts of the United States, the claimants were prevented from removing their tobacco from the seat of war, where it was exposed to danger; and that but for such prohibition they would have removed and saved it; but that they were compelled to leave it in the hostile country, where it ultimately perished from one of the dangers incident to the war; that the acts of the United States alleged in the memorial, by which the claimants were prevented from removing their tobacco, were not lawful acts under international law.

That, by the statute of 13th July, 1861, (12 Stat. at L.,) commercial intercourse between the States in rebellion and the loyal States was prohibited, subject only to the license and permission of the President "in such articles, and for such time and by such persons as he in his discretion may think most conducive to the public interest, and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury;" that by the regulations issued by the Secretary of the Treasury under this act, a tax was imposed upon such permits, and a special tax upon property to be brought out under them, and it was provided that such permits should only be granted to loyal citizens of the United States.

That this act and the subsequent legislation of the United States did

not provide for blockade or non-intercourse *jure belli*, but were acts regulating intercourse by municipal statute between different sections of the territory of the United States; that these statutes worked injustice to the claimants, and deprived them of privileges to which they were entitled by the treaty between the United States and Great Britain; that the loss of the property in question was caused by them, and therefore was a legitimate subject of international reclamation before the commission.

That, considering the prohibition in the light of a belligerent act, the United States were bound, in analogy to maritime blockade, to allow a reasonable time for the claimants to bring out their property; and, in further analogy to the law of maritime blockade, that, as a belligerent cannot blockade a port against neutrals while he allows his own or his enemy's merchant-vessels privilege of ingress and egress for the purposes of trade, the United States cannot rightfully permit their own citizens to trade with the insurgents under permits, while prohibiting trade to neutral aliens and others without permits.

He cited the letter of Mr. Cass, Secretary of State, to Mr. Mason, United States minister to France, in June, 1859, reported in Dana's *Wheaton*, 672, *n.*; 1 *Kent's Com.*, 146; *The Grey Jacket*, 5 Wall., 342; *The William Bagaley*, *id.*, 408; *The United States vs. Lane*, 8 Wall., 185; *The Francisca*, 10 Moore's P. C. R., 87; *The Ouachita Cotton*, 6 Wall., 531; *Mitchell vs. Harmony*, 13 How., 115.

The commission unanimously, and without hearing argument for the United States, sustained the respective demurrers, and disallowed the claims.

In the case of James Stewart, No. 339, it was alleged that the claimant, having purchased certain cotton situated upon the Mississippi River, at Dead Man's Bend, below Natchez, sent a steamboat to remove the cotton, but that the steamboat was improperly forbidden to land by the captain of a gun-boat then cruising opposite the place where the cotton was stored; that the claimant was thus prevented from removing his cotton, which was soon afterward burned by rebel scouts.

Various questions of fact arose in this case as to the title of the claimant; but it was maintained on the part of the United States that, upon the facts alleged, no reclamation could lie against the United States; that the discretion of the commanding officer of the gun-boat as to permitting or not permitting vessels to land, even for the removal of property for which permits from the civil authorities were held, was absolute; and that the alleged act of the officer, in prohibiting the steamboat from approaching the land and removing the property, was within the scope of his authority, and in the exercise of his duty; that the subsequent destruction of the property by the rebels was not a necessary or natural consequence of any wrongful act of the United States or any officer of the United States, and that no liability existed against the United States in respect of the transaction.

The claim was disallowed, all the commissioners agreeing.

4.—*Claims for damages for alleged wrongful arrest and imprisonment.*

These claims were one hundred in number, and the total amount of damages claimed, in all, was nearly \$10,000,000, exclusive of interest; or, adding interest at the rate allowed by the commission, say \$16,000,000.

In thirty-four of the cases awards were made in favor of the claimants against the United States, in all amounting to \$167,911. In sixty-four cases these claims were disallowed; one case was dismissed without prejudice for impertinent and scandalous language used in the memorial, and one was withdrawn by Her Majesty's agent by leave of the commission.

The question early arose before the commission whether in case of death prior to the presentation of the claim of the party against whose person the wrongful acts were alleged to have been committed, the claim for such injuries was to be considered as surviving to the personal representatives. This question was raised by demurrer interposed on behalf of the United States, in the cases of Edward McHugh, No. 357; Elizabeth Sherman, No. 359; and Elizabeth Brain, No. 447.

In the case of Mrs. Sherman, No. 359, all connection between the injuries alleged and the death of the intestate was disclaimed by the memorial.

In the cases of Mrs. Brain, No. 447, and of McHugh, No. 357, there were allegations that the injuries complained of caused or contributed to cause the death of the intestate; but there was no allegation of any local statute allowing damages in favor of personal representatives for a wrongful injury causing death.

On the part of the United States it was claimed that, as by the common law both of Great Britain and of the United States, claims for injuries to the person did not survive to the personal representatives, such claims were not to be considered as within the submission by article 12. That the claims which by that article were submitted could not be taken to comprehend claims of a character not recognized by the municipal laws of either of the countries parties to the treaty.

Her Majesty's counsel contended that the municipal laws of the two countries were not to be taken as controlling the rights of claimants in this regard; that claims for injuries to the person, whether such injuries caused death or not, were, in the diplomatic intercourse of civilized nations, treated as a proper subject of international reclamation in behalf of the personal representatives of the person injured after his death. He cited the practice of the commissions under the convention between the United States and New Granada, of 10th September, 1857, (12 Stat. at L., 985,) and under the treaty of Guadalupe-Hidalgo, of 2d February, 1848, between the United States and Mexico, (9 Stat. at L., 933, art. 13.)

In the case of McHugh, No. 357, where the deceased died unmarried and leaving only collateral relatives not dependent on him for support,

entitled to inherit, the commission unanimously sustained the demurrer and disallowed the claim.

In the cases of Mrs. Sherman, No. 359, and Mrs. Brain, No. 447, in both which cases the deceased left a widow and minor children, the commission, Mr. Commissioner Frazer dissenting, overruled the demurrers. Mr. Commissioner Frazer read an opinion for sustaining the demurrers in each of the three cases, which will be found in the appendix, I.

It may be added that on final hearing on the merits the claim of Mrs. Sherman was unanimously disallowed; and though an award was made (Mr. Commissioner Frazer dissenting) in favor of Mrs. Brain on account of property taken from her husband, that award included no damages for imprisonment.

The following cases are selected as class cases illustrating the holdings of the commission upon the various questions involved in these claims.

In the case of Ernest W. Pratt, No. 6, it was alleged that the claimant arrived in New York on a British mail-steamer from Nassau, on the night of the 17th March, 1865; that before leaving the vessel he was arrested by order of General Dix, then in command of the United States forces in and around New York, his luggage and papers searched, and he himself committed to prison, where he was detained until the 25th June following, a period of one hundred and seven days, when he was discharged without trial.

That he had received at Nassau, from the United States consul there, an endorsement upon his discharge from the steamship *City of Richmond*, of which he had been first mate, certifying that he was entitled to pass to the United States as a British subject, which certificate had been given to him by the consul with the assurance that it had all the effect of a regular passport.

It appeared that in October, 1869, he had been about to commence suit against General Dix to recover damages for his false imprisonment, and his counsel having informed the Secretary of State of the United States of his intention to bring such suit, the Secretary, by letter to his counsel in answer, suggested whether it was not expedient to "await the result of the deliberation of this (the United States) Government and that of Great Britain upon a proposition for the establishment or adjudication, among other things, of claims like that of Mr. Pratt;" and the claimant averred that in conformity with this suggestion he omitted to bring his suit against General Dix.

The *City of Richmond*, of which vessel the claimant had been first mate, had been engaged in January, 1865, in carrying crew, arms, and ammunition from London to the rebel cruiser *Stonewall*, which received substantially her entire crew and armament of small-arms and ammunition by that means. On parting with the *Stonewall*, the *City of Richmond* steamed to Bermuda, and thence to Nassau, where her officers and

men were discharged, the claimant immediately proceeding to New York, as above stated.

The claimant alleged in his memorial, however, that he shipped upon the City of Richmond in good faith for an ordinary voyage to the West Indies, and without information or suspicion that "her voyage was in any way connected with either of the belligerent parties in the United States," and that, on finding her engaged in supplying the Stonewall, he had protested to his captain, who paid no attention to his protest, and required him to obey orders on pain of arrest for mutiny. The fact of the claimant's having been thus engaged on the City of Richmond was reported to General Dix, and this, in connection with his arrival in New York from Nassau, constituted the grounds of his arrest by General Dix.

On the part of the United States it was claimed that the fact of the claimant's having been actively engaged in aiding the enemies of the United States, and that he immediately thereafter came from Nassau, the principal port in the Atlantic from which intercourse with the States in rebellion was kept up through the blockade, to New York, justified the authorities of the United States in arresting and holding him both as a prisoner of war and as a probable spy.

On the part of the claimant it was contended that there was no proof of any offence committed by the claimant against the laws of the United States, or the laws or principles of neutrality. That even if he had voluntarily participated in the cruise of the City of Richmond to equip the Stonewall, this fact would have furnished no justification for his subsequent arrest in New York, though it might have sufficed to determine Her Majesty's government not to interfere for his protection or indemnity. That the informality in his passport was caused, if not contrived, by the United States consul at Nassau, and that the assurance by that officer to the claimant that the passport was a sufficient one was in bad faith, and made with a view to the claimant's arrest when he should arrive in the city of New York, the consul having sent by the same ship a letter addressed to General Dix, giving him the information upon which he acted; and that the claimant's imprisonment was unnecessarily and unjustly severe and prolonged.

The commission unanimously awarded to the claimant the sum of \$1,200.

The cases of John C. Rahming, No. 7; Joseph Eneas, No. 126; and Joseph W. Binney, No. 352, were of substantially the same character, and were all decided at the same time. These claimants were all domiciled in the city of New York, and there engaged in trade. All were carrying on a considerable trade with the port of Nassau, and were arrested on the charge of carrying on an unlawful traffic with the enemies of the United States under color of their trade with Nassau. Rahming and Eneas were both arrested on the 31st December, 1863, and confined

under military authority in Fort Lafayette, until July 2, 1864, and then discharged without trial, on giving bonds for their appearance if called on for trial by the United States authorities. Rahming had also been previously arrested, on a charge of having shipped arms to the rebels, in September, 1861, and had then been detained as a prisoner in Fort Lafayette for fifteen days. Binney was arrested on the 14th June, 1864, imprisoned in Fort Lafayette under military authority for five weeks, and then transferred to a jail in the city of New York, where he was detained seventeen days longer and was then discharged by General Dix without any bonds or security required.

In each of these cases it was alleged by the claimant, and proofs were taken in support of such allegations, that the claimants were innocent of the offences charged against them; that their imprisonment was unnecessarily and improperly protracted; and that they received improper and unnecessarily severe treatment during their imprisonment. Proofs were taken on the part of the United States to show the charges against them well founded, and to rebut the charges of improper treatment. In each of the cases allegations were also made of large resulting damages to the claimants by reason of their imprisonment.

Rahming, by his memorial, claimed damages \$580,800, besides interest. He was awarded by the majority of the commission (Mr. Commissioner Frazer dissenting on the question of amount merely) the sum of \$38,500.

Eneas claimed damages \$720,000, besides interest, and was awarded \$1,540, all the commissioners joining.

Binney claimed \$100,000, besides interest, and was awarded \$5,390, all the commissioners joining.

In each of the cases I am advised that the decision turned upon questions of fact, all the commissioners agreeing that the proofs, though sufficient to warrant the arrest in each case, did not leave the truth of the charges free from doubt; and that the detention of the prisoners without trial was unnecessarily protracted. Mr. Commissioner Frazer read an opinion in the case of Rahming, which will be found in the appendix, I.

In the case of John Carville Stovin, No. 23, claimant was arrested at Cumberland, Md., in October, 1861, on the charge of disloyalty, in attending secession meetings in Cumberland, and being the means of transmitting information to the enemy. He was taken to Fort McHenry, there detained for about five weeks, and discharged without trial. He alleged that his business as a manufacturer at Cumberland was stopped, and in effect destroyed by his arrest, and claimed damages \$380,794.27, besides interest; including, however, some fire-wood, hay, corn, and oats, alleged to have been taken and appropriated by the United States soldiers. He alleged, also, ill-treatment while in confinement. Proofs were taken on both sides on the question of his

disloyal conduct, and it was contended on the part of the United States that the facts of the case justified his arrest as a disloyal person, openly giving aid and comfort to the rebellion by his language and expressions of sympathy, in a village situated upon the frontiers of the enemy's country, and where such conduct involved danger to the military operations of the United States.

On the part of the claimant the charges of disloyal conduct and language were denied, and proof was adduced to show him a law-abiding and peaceable inhabitant.

The commission gave an award to the claimant of \$8,300, all the commissioners joining.

In the case of Frank Russell Reading, No. 43, the claimant was arrested in the city of Washington on the 6th July, 1864, that city then being threatened by the rebel forces under General Early; was brought to trial before a military commission in Washington on the charge of uttering disloyal and treasonable language in the District of Columbia when threatened by the enemy, such language being calculated to give aid, comfort, and assistance to the enemy. He was found guilty by the commission, and sentenced to imprisonment for five years, with hard labor, at the Dry Tortugas, or such other military prison as the Secretary of War might select. Under this sentence he was imprisoned at Fort Delaware from the 30th August, 1864, till 1st June, 1865.

On the part of the United States it was contended that the military commission was a lawful tribunal, competent for the trial and punishment of military offences, and having full jurisdiction of the case of the claimant, both as to subject-matter and person; that at the time of his arrest and trial Washington was a city in military occupation, environed by forts of the United States, occupied and defended by their armies, the headquarters of the Commander-in-Chief of the Army and Navy of the United States, and, as the capital of the country, always a vital point of attack for the rebel forces, and at this specific time the actual objective point of a vigorous and determined attack by the enemy, who actually reached, as their advanced post, on the 12th July, Fort Stevens, within the limits of the District of Columbia and within four or five miles of the Capitol.

That the offence charged against Reading was a purely military offence, of which the civil tribunals had not cognizance, and so was not within the principle held by the Supreme Court in the case of *Milligan*, (4 Wall., 2.)

That Reading having appeared in person and by counsel before the military tribunal, and having pleaded in chief, without raising any question to the jurisdiction, could not be heard to question the jurisdiction of the tribunal as to his person merely; and that the commission having by law jurisdiction of the subject-matter of the charge, the failure to object to jurisdiction as to the person obviated all question as to

their complete jurisdiction. The counsel for the United States cited the case of *Vallandigham*, (1 Wall., 243.)

On the part of the claimant it was contended that the military tribunal had no jurisdiction whatever, and that the imprisonment of the claimant under it was wholly without authority of law.

The commission gave a unanimous award in favor of the claimant for \$15,400.

In the case of John I. Shaver, No. 51, the memorial alleged that the claimant, being at the time domiciled in Canada, but travelling in the United States on the business of the Grand Trunk Railway Company, a Canadian corporation, of which he was an agent, was arrested at Detroit, on the 15th October, 1861, by direction of Mr. Seward, the Secretary of State of the United States; that he was taken thence to Fort Lafayette, in New York Harbor, and confined there, and subsequently at Fort Warren, in Boston Harbor, until the 6th January, 1862. He alleged that by his arrest he was thrown out of lucrative employment as agent of the railway company named; that by it he lost the confidence of his employers and was unable to regain his position after his release; and that he suffered large pecuniary losses in consequence. He claimed damages \$100,000.

The arrest was made upon information communicated to Mr. Seward that the claimant was engaged in conveying communications between the rebels in Canada and those within the insurrectionary States. The proofs failed to sustain the charge, and it appeared that Mr. Kennedy, chief of police of the city of New York, immediately after the arrest of the claimant, reported to the State Department that he found no proofs to warrant his detention, or to implicate him in any improper communication with the enemy.

The commission awarded the claimant \$30,204, Mr. Commissioner Frazer dissenting on the question of amount only.

In the case of Samuel G. Levy, No. 61, it appeared that the claimant, a resident of Canada, on landing in Boston from a British steamship from Liverpool in May, 1864, was taken thence to New York, and there detained for about eight days, on a charge of being engaged in blockade-running. At the end of that time he was discharged upon giving bail for his appearance within six months, if required. He alleged large consequential damages by interference with his due attention to his business, and by the enforced breaking of an engagement of marriage in consequence of his arrest, and claimed as damages, £20,000.

The commission unanimously gave him an award of \$930.

In the case of James Stott, No. 271, it appeared that the claimant, domiciled in the State of Maine, was arrested at Dexter, Me., September 2, 1863, on the charge of being a deserter from a cavalry regiment in the United States service; was sent thence to the regiment from which he was

alleged to have deserted, at Warrenton, Va., where it plainly appeared that the charge was unfounded, it being a case of mistaken identity. He was detained until the 9th of November, 1863; and, for the purpose of making him some compensation as to loss of time, and of giving him transportation back to his home, was mustered into the United States service and discharged with the pay of a private soldier for the time he had been detained, and with transportation back to his home.

An award was made for \$775 in favor of the claimant, in which all the commissioners joined.

John I. Crawford, No. 79, was arrested in the city of New York, on the 10th of May, 1864; sent to Fort Lafayette, and there detained until the 27th of July, 1864, when he was brought to trial before a military commission in the city of New York, on the charge of violation of the laws of war, in passing through the military lines of the enemy, first, from South Carolina, by way of Richmond, to New York; second, from New York again, by way of Nassau and Wilmington, through the blockade, to South Carolina; and again from South Carolina, by way of Richmond, to New York; and also by purchasing goods in New York, and sending them thence through the lines to Richmond, Va. He was convicted on all the specifications except that relating to the purchasing and sending of goods, and was sentenced to give bonds in such sum and with such sureties as should be satisfactory to the general in command of the department, that he would not visit, traffic, or correspond with the States in rebellion, nor give aid, comfort, or information to the enemy during the war, in default of giving such bonds to be confined at hard labor during the war. The bond was immediately given, and Crawford was discharged. The proofs before the commission fully sustained the findings of the military tribunal.

On the part of the claimant it was contended that the military tribunal was without jurisdiction, and that the claimant's imprisonment and detention were unlawful.

The memorial claimed \$500,000 as damages, and the commission unanimously disallowed the claim.

In the case of John Carmody, No. 85, it appeared that the claimant, domiciled in New Orleans, was, in March, 1865, conscripted into the military service of the United States; the notice of his conscription requiring him to report for military service was addressed to him by the name of John Kemdy, and on receiving it he procured from the British consul at New Orleans a certificate of his British nationality, which he alleged that he presented to the officer in charge of the office at which he was required to report, but two days after was arrested by a squad of United States soldiers, and was detained in a military prison for some five or six weeks. The arrest and detention evidently arose from mistake growing out of the confusion of names. The memorials

claimed \$100,000 damages, besides interest, and the commission unanimously awarded the claimant \$500.

In the case of William Patrick, No. 97, it appeared that the claimant, a British merchant, domiciled in New York, was, on the 28th August, 1861, arrested and committed to Fort Lafayette, where he was detained till the 13th September following, when he was discharged. His arrest was based on the charge that the firm in New York of which he was a member, and which had a branch house also at Mobile, Ala., was a channel for carrying on correspondence between rebels in Europe and those in the insurrectionary States. Representations by highly respectable citizens of New York of Mr. Patrick's loyalty were made to the Secretary of State, and the British minister also intervened in his behalf. Investigation showed that the charge against Mr. Patrick was without foundation, and he was discharged after a confinement of seventeen days. The proofs established Mr. Patrick to have been a gentleman of high social and business standing, and also to have been in conduct marked by loyalty and good faith toward the Government during the rebellion, and to have furnished liberal contributions in its aid. His arrest was undoubtedly caused by false or erroneous information.

On behalf of the claimant punitive damages were claimed. On the part of the United States it was insisted that no such damages could be allowed; that Mr. Patrick, domiciled within the United States, was exposed in the same degree with citizens of those States to arrest on false charges or erroneous information, and that, having been discharged within a reasonable time for inquiry to be made, he was not entitled to claim damages against the United States. That if any damages were awarded to him, they should be such only as would afford him fair compensation for the injury inflicted.

The memorial claimed \$100,000, besides interest. The commission awarded the claimant \$5,160, Mr. Commissioner Gurney dissenting on the question of amount.

In the case of Joseph J. Bevitt, No. 104, the claimant, until that time domiciled in South Carolina and Virginia, left Richmond in April, 1863, and passed through the rebel lines to the Potomac River, was there taken on board a United States transport steamer on the 30th April, 1863, taken to Washington, detained in the Old Capitol prison until the 19th May, and then sent back into the confederacy.

On the part of the claimant, it was contended that Bevitt, being a British subject, and not having offended against the laws of the United States, or taken part in the domestic strife then in progress, was entitled to such egress without molestation by the public authorities.

On the part of the United States it was maintained that the attempt of the claimant to enter the loyal portion of the United States from the enemy's country, and through his military lines, after having voluntarily

remained within the enemy's country during two years of the war, was one which the United States might lawfully prevent or punish, and that their sending him back into the enemy's country, from which he came, was an act permitted by public law.

The commission disallowed the claim, Mr. Commissioner Gurney dissenting.

In the case of William Ashton, No. 325, the claimant, until then domiciled in the State of South Carolina, in February, 1863, came north through the Federal lines under a pass from the confederate General Lee, and while crossing the Potomac River into the State of Maryland was arrested by the naval patrol, on the 7th February, 1863. He was taken to Washington, there detained until the 11th May, 1863, and then sent back through the lines into the enemy's country.

On the part of the United States it was contended that the case was parallel with that of Bevitt, above reported, and that the arrest, detention, and return of the claimant were lawful acts under the recognized laws of war.

The commission awarded to him the sum of \$6,000, Mr. Commissioner Frazer dissenting.

The undersigned finds difficulty in reconciling the decision of the commission in this case with that in the case of Bevitt. It may be noted, however, that Bevitt was detained but twenty days before being sent back, while Ashton was detained three months and four days.

In the case of Thomas Barry, No. 127, the claimant, domiciled at New Orleans, alleged that, on the 15th March, 1864, he was arrested without any cause or provocation, but arbitrarily and maliciously, by a provost-marshal under the orders of General Banks, then in command of the department; was committed to the parish prison, there confined for ten weeks, and then released on giving a bond conditioned that he should report daily to the provost-marshal in the city of New Orleans. That he continued so to report until the 31st December, 1864, when the bond was cancelled and the claimant fully discharged. He claimed damages \$50,000. The proofs showed that he was arrested in the act of clandestinely and in disguise attempting to pass from New Orleans through the lines into the enemy's country, having upon his person letters to residents within the enemy's lines, and carrying confederate money—the use of which was forbidden by the Federal authorities. That only two months before he had perpetrated the same offence in the same disguise; had visited many places within the enemy's lines, and had returned into the Federal lines in the same clandestine manner. Before his arrest he had applied for permits to go within the confederate lines for the alleged purpose of looking up and bringing back cotton alleged to have been owned by him; but such permission had been refused.

The claim was unanimously disallowed.

In the case of Henry Glover, No. 134, the claimant, a resident of the State of Georgia, was, in November, 1864, in company with a companion, in Jones County, Georgia, within the enemy's territory, overtaken by a detachment of cavalry from the corps of General Kilpatrick, forming a part of the flanking force of General Sherman's army in the march from Atlanta to Savannah. His companion fled and was fired upon; claimant waited, was arrested and detained for twenty-four hours, when he was discharged, it appearing that he was a civilian and a British subject.

His claim was disallowed, all the commissioners agreeing.

The case of Thomas H. Facer, No. 203, was similar in character to that of Glover, and was disallowed in like manner.

In the case of the administrators of James Syme, No. 139, it appeared that the decedent had been for many years domiciled at New Orleans, and there carrying on a large trade as a wholesale and retail druggist; that on the 28th August, 1862, he was arrested and taken before Major-General Butler, then in command of the Department of the Gulf, and there arraigned on charges styled in the memorial "false, wicked, and malicious," to the effect that he had aided and abetted the so-called confederates by the shipment of sulphur, drugs, and medicines into their lines, and that he had violated his neutrality. General Butler, being satisfied of the truth of the charges, condemned him, without the intervention of any court or military tribunal, to be imprisoned at Fort Pickens for three years at hard labor with ball and chain; the ball and chain were, however, within a few days, and before the commencement of execution of the order, remitted. He was detained in confinement at New Orleans for about six weeks; then sent under guard to Fort Pickens, in Pensacola Harbor, Florida, and there confined until about the 1st March, 1863, when he was brought back to New Orleans, and there detained during an investigation by a military commission, which reported him not guilty of the charges upon which he was imprisoned. Pending the proceedings of this commission he was discharged from confinement by order of General Banks, who had succeeded General Butler in command, on giving a bond, with surety, in the sum of \$20,000, conditioned for his appearance on requirement by the Government. Upon the report of the commission the bond was canceled August 28, 1863. At the same time with his arrest his drug-store and contents, in New Orleans, were seized and appropriated to the use of the United States, and remained in their possession until about the 1st May, 1864, when the store, with so much of the stock of drugs, &c., as had not been used, was surrendered to his possession by order of the War Department.

A large amount of testimony was taken on both sides upon the question of his guilt or innocence of the charges on which he was imprisoned.

On the part of the United States, it was also proved that the decedent, in November, 1861, and again in March, 1862, had accepted commissions as surgeon—first with the rank of captain, and afterwards with the rank of major—in the battalion of the Louisiana State militia designated as the British Fusiliers; that this battalion was a regularly organized portion of the State militia of the rebel State of Louisiana, but was organized under the reservation that its members should be required to serve only within the limits of the city of New Orleans; that, on the acceptance of these commissions, the decedent was required by law to take, and did take, an oath faithfully to discharge the duties of the office to which he had been appointed, and to support, protect, and defend the constitution of the State of Louisiana and of the Confederate States; that at the time of accepting these commissions, respectively, the decedent was above the age of forty-five years, and was exempt by the laws of the State of Louisiana from militia service, by reason of age, even if otherwise liable by reason of nationality or domicile. Evidence was also given on the part of the United States to the effect that Dr. Syme, shortly after the occupation of New Orleans by the Federal forces, refused to sell medical and surgical supplies to medical officers of the United States Army. Dr. Syme died in January, 1872, before the filing of the memorial, leaving a widow and one son entitled to inherit his estate, both born within the United States and always domiciled there.

On the part of the United States it was contended that by the acceptance of these commissions and the taking of the oaths above recited, Dr. Syme had deprived himself of the condition of a neutral alien and assumed the character of an enemy of the United States, and was not entitled to a standing as a British subject under the treaty; that the proofs fully sustained the charges upon which he was condemned by General Butler; that if any doubt existed upon the proofs now before the commission as to the truth of those charges, the evidence before General Butler and upon which he acted was certainly sufficient to sustain his finding and to justify the condemnation pronounced by him upon the proofs before him; that as military commander of a captured city within the enemy's country, then strictly and solely under military government, General Butler was vested with full authority to administer military law, either in person or through military courts and tribunals organized under his order; that the offense of which he found Dr. Syme guilty was a crime under military law of a high grade, and justifying the sentence pronounced upon him.

The memorial claimed damages for the arrest and imprisonment, \$100,000; for the drugs and other property of the decedent taken and appropriated by the United States, (less the value of the amount returned,) and the rent of the store, \$166,925; and damages by the breaking up of the business of the decedent, and the loss of profits which he would have derived from the business, \$150,000, besides interest.

The commission (Mr. Commissioner Frazer dissenting) made an award

in favor of the claimants for \$116,200. I am advised that this award included nothing for damages for imprisonment, but was made solely in respect of the drugs and other property taken and appropriated by the United States, and the rent of the drug-store while occupied by them. Mr. Commissioner Frazer expressed his views upon the case as follows :

Being over the military age, and exempt from military duty as a druggist also, Dr. Syme took a commission in the British Fusiliers and an oath of office to support the rebel confederacy, and evinced his hostility further, as I deem the weight of the evidence to show, by refusing to sell goods to the United States after New Orleans fell into Federal possession. This made him an actual enemy, and he could have no standing to prosecute a claim before this commission. The beneficiaries—his wife and child—have none, because they are Americans. His condemnation by General Butler was upon what appeared at the time to be satisfactory evidence, though it was subsequently shown before the military commission, organized under the order of General Banks, that he was probably innocent of the charges upon which he was arrested. He was restored to liberty as soon as an investigation could conveniently be had; and what remained unconsumed of his confiscated goods was also restored, together with the possession of his building.

In so much of this opinion of Mr. Commissioner Frazer as relates to the sufficiency of the evidence upon which General Butler acted to sustain his finding and sentence, and as relates to the probable actual innocence of Dr. Syme as appearing before the commission, I am advised that the majority of the commission concurred.

In the case of William B. Booth, No. 143, a claim was made for \$56,000 damages for the alleged wrongful arrest of the claimant in the neighborhood of Fort Jackson, Louisiana, and subsequent imprisonment. He was arrested by United States soldiers on the 8th August, 1862, taken to Fort Jackson, and there confined till the 28th August; then sent to Fort Pickens, Pensacola Harbor, and there confined till the 15th August, 1863; then taken back to New Orleans and detained till the 26th August, 1863, when he was unconditionally released.

Previous to his arrest, Dr. Booth, who resided in Louisiana, two miles from the forts and outside the lines of military occupation by the United States, had been on the request of Dr. Gordon, the surgeon of the forts, visiting and prescribing for the prisoners and Federal soldiers at the forts. Gen. Neal Dow, the commander, learning the fact, had notified him that he could not be permitted to visit the forts without taking the oath of allegiance, or giving his parole of honor not to communicate information to the enemy. Dr. Booth declined to do either of these things. After his arrest he still continued his refusal to give the required parole, and, persisting in his refusal, General Dow ordered his transfer to Fort Pickens and his detention there. At this time Forts Jackson and Saint Philip, lying on the opposite banks of the Mississippi some one hundred miles or more below the city of New Orleans, were occupied by a United States force of about six hundred soldiers, and about the same number of liberated slaves, under the command of General Dow. The garrisons were weak, and a

large number of the troops actually there were prostrated by sickness. General Dow deemed it of the utmost importance that a knowledge of the weakness of his garrison should be kept from the enemy. The refusal of Dr. Booth to give the required parole roused the suspicions of General Dow, and when persisted in, led to his sending the claimant to Fort Pickens. During his stay at Fort Pickens, and after his retransfer thence to New Orleans, he still persisted in refusing to give the required parole, and was finally discharged, after a confinement of nearly thirteen months, unconditionally and without parole. Lord Lyons, during his confinement, in a letter to Mr. Coppel, British consul at New Orleans, stated that the required parole was deemed not unreasonable by Her Majesty's government, after consulting the law officers of the Crown.

On the part of the United States it was insisted that the arrest and detention of Dr. Booth were warranted as measures of just military precaution in regard to an enemy by domicile possessed of knowledge, the communication of which to the enemy would be highly dangerous to the United States, and who, by his refusal to give this proper and reasonable pledge, had, in the language of Lord Lyons, entitled the United States to treat him as a suspected person.

The memorial of Dr. Booth also included claims to the amount of \$83,890, besides interest, for property of the claimant alleged to have been taken and appropriated by the United States.

The commission (Mr. Commissioner Frazer dissenting) awarded to the claimant the sum of \$24,900, which award was, as I am advised, wholly in respect of property taken, and included nothing on account of the arrest and imprisonment.

John McCann, No. 173, and John Murta, No. 195, natives of Ireland and domiciled in Luzerne County, Pennsylvania, were arrested there—McCann in September, 1863, and Murta in November, 1863—by United States troops, under authority of a provost-marshal; were taken to Fort Mifflin and there confined, McCann till March and Murta till April, 1864.

The proofs showed that at the time of their arrest an organized conspiracy existed in Luzerne County and vicinity to resist the Federal draft for troops; that great violence was used against Federal officers; that open defiance of the Federal authority was made in public meetings of the mining population; that loyal citizens sustaining the Government had been assassinated, and measures had been adopted to ambuscade and massacre Federal troops, should they be sent there to enforce the draft; that the principal disturbing element in this conspiracy was the Irish Catholic miners; that not only secret associations were formed, but public meetings were openly held for the avowed purpose of stopping the mines and thus stopping the war; that a large number of persons regarded as the ringleaders and most dangerous persons in this movement were arrested, and among them these two claimants. No proof was made of the complicity of either of the claim-

ants with the actual resistance to the draft or violation of law; but Murta was shown to have been a member of the organization known as the "Knights of the Golden Circle," created to oppose the draft and aid the rebellion. Neither of the claimants was ever brought to trial.

In the case of McCann an award was made in favor of the claimant for \$3,000, in which all the commissioners joined. In the case of Murta an award was made for \$1,200, Mr. Commissioner Frazer dissenting.

In the case of Thomas Riley, No. 192, the claimant, a resident of Luzerne County, Pennsylvania, was drafted into the United States military service in November, 1863, was taken to Philadelphia and there held in the United States military barracks for about six weeks, when he was taken sick and sent to the hospital, and there remained confined by disease till the 6th of April, 1864, when he was discharged by the War Department, through the intervention of Lord Lyons, as being a subject of Great Britain, having received his pay as a soldier for the time during which he was held.

On the part of the United States it was contended that he was held simply in consequence of his failure to comply with the regulations of the provost-marshal's department in regard to showing proof of alienage. The case showed, however, that the proofs of his alienage were submitted by Lord Lyons to Mr. Seward in November, 1863, within a few days after his arrest, and his discharge was not ordered till about four months after.

The commission unanimously awarded him the sum of \$300.

Edward McCabe, No. 197, was drafted into the military service of the United States in Queens County, New York, in September, 1863. He appeared before the enrolling-board and claimed exemption; was informed of the regulation prescribing the method of making the necessary proof; was given time to file it, but failing to do so was arrested by order of the provost-marshal and detained for two days, when, having furnished the necessary proof, he was discharged.

The commission unanimously disallowed his claim.

Patrick J. O'Mulligan, No. 476, was drafted in Cayuga County, New York, in October, 1863. He appeared before the board of enrollment and claimed exemption as a British subject, but failed to comply with the regulations for the proof of alienage. He was detained for twenty-four hours, and on physical examination by the surgeon was found unfit for military service and was discharged. For these grievances he claimed the sum of \$800,000, besides interest.

His claim was unanimously disallowed.

In the case of Mary Sophia Hill, No. 198, the claimant, a native of Ireland, was domiciled during the rebellion and for many years before in New Orleans. At the time of the capture of New Orleans by the

Federal forces in 1862, she was in attendance on the confederate hospitals in Virginia, but shortly after returned to New Orleans under a proper pass. In 1863 she went to Ireland, and returned to New Orleans, taking the oath of neutrality on landing. She again left New Orleans in the fall of 1863 under a pass and went to Virginia, where she remained for five months "rendering assistance in the hospitals and to prisoners by means of flags of truce." In 1864 she returned to New Orleans, and having no pass was arrested and detained in prison for two days; when, having satisfied the provost-marshal that she was a British subject, she was released on bail. After her discharge and while sick she alleged that she was called upon by a woman who gave the name of Ellen Williams, and gave her a note purporting to be from Gen. Tom Taylor, an officer of the confederate service commanding a post within the confederate lines in Louisiana. This woman informed claimant that she was going through the lines into the confederacy if she could get a pass from General Banks, and offered to take letters from the claimant. Claimant gave to her a letter to General Taylor, acknowledging the receipt of his letter, and saying to him, "Communicate and state what you require, and I will do all in my power; I will be here until the end of July." She also gave to her a letter addressed to her brother, a soldier in the confederate service in Virginia, in which she denounced the "Yankees;" and said, among other things, "We have accounts of the battles in Richmond, but so hashed up to suit northern palates you can make neither head nor tail of the affair; but through my spectacles I see General Grant and his well-whipped army with their faces toward Washington and their backs to the hated city of Richmond, except those who take their summer residence at Libby. Tell the boys Banks has made a splendid commissary to Dick Taylor's army, and they were so ungrateful as also to whip him, and very badly." She also gave this woman another letter of similar character, addressed to Mrs. Graham, a person living in Montgomery, Alabama, within the lines of the confederacy.

These letters were delivered on the 20th May, 1864; and within a few days after she was arrested by an officer of the provost-marshal's bureau, committed to prison, and there detained until July, when she was brought before a military commission and tried on the charge of "holding correspondence with and giving intelligence to the enemy, in violation of the Fifty-seventh Article of War," the specifications being the written letters above named. She was found guilty of the charge except the words "and giving intelligence to;" and was sentenced to "be confined during the war, at such place as the commanding general may direct." The proceedings and findings of the commission were approved by Major-General Hurlbut, then in command; but the sentence was so modified as to direct the claimant to be sent into the so-called confederacy as an enemy; and the provost-marshal-general was charged with the execution of the order.

At the time of her trial New Orleans was still under military government, but the United States district court had been reorganized under Judge Durell, and was in operation in that city. No State tribunals were in operation, nor any local tribunals, except under authority and permission of the military commander.

On the part of the claimant it was contended, first, that the claimant was not amenable to military jurisdiction, but must be tried, if at all, before the civil tribunals; second, that if amenable to military jurisdiction, the commission before which she was tried was not a competent tribunal; that by the Fifty-Seventh Article of War (2 Stat. at L., 366) the only military tribunal having cognizance of such an offence was a court-martial, a tribunal distinct and different from a military commission; third, that the finding of the military commission that she was guilty of the charge except the words "and giving intelligence to," was in fact an acquittal, correspondence with the enemy without giving him intelligence not being a military offence or a violation of the article above referred to; fourth, that the commanding officer had no authority to change the punishment directed by the sentence of the court, and substitute banishment into the confederacy for imprisonment; that this substitution was not with the consent of the claimant, and was not a mitigation of punishment; fifth, that the letters were not in fact sent into the confederacy, but were delivered by the messenger to the United States military authorities in New Orleans, and that the evidence tended to prove that the pretended messenger to whom they were delivered was in fact a spy and agent of the United States.

On the part of the United States it was contended that the offence charged against the claimant was a military offence purely, not cognizable by the civil tribunals; that the claimant, domiciled in a city within the enemy's country and recently captured from the enemy, held by military power only, and governed only by military authority, was amenable to military jurisdiction; that the tribunal before which she was tried was a competent military tribunal, organized under sufficient military authority, and having jurisdiction both of the subject-matter and of the person of the claimant; that irrespective of the proceedings, finding, or sentence of the commission, the commanding general had full authority to expel the claimant from the city and send her within the enemy's lines, on satisfactory evidence of her active sympathy with the rebellion, and of her attempt merely to communicate with the enemy, and that the modification and mitigation by the commanding general of the punishment decreed by the military tribunal was one of lawful power, and was not a matter of which the claimant could rightfully complain.

The commission gave an award in favor of the claimant for \$1,560, Mr. Commissioner Frazer dissenting. This claimant was the same person whose original memorial (No. 8) was dismissed by the commission on account of its improper and indecorous language.

The case of Colin J. Nicolson, No. 253, may properly be reported in connection with that of Miss Hill. Nicolson, a native of Scotland, had been domiciled in New Orleans since 1852. He was arrested in that city on the 15th of September, 1864; was detained in prison till the 22d of November, 1864, when he was brought before a general court-martial in that city and tried on the charges, first, of relieving the enemy with money, by investing money in bonds of the Confederate States and transmitting the same to England for sale there; and, second, of holding correspondence with the enemy by letters passing between himself and one Violet, an enemy of the United States, resident at Mobile; and in and by such correspondence devising means for bringing cotton out of the confederacy, and disposing of it for the joint benefit of himself and Violet, and for negotiating and selling bonds of the Confederate States. He was convicted on both charges, and was sentenced to imprisonment at Fort Jefferson, Fla., or at such other place as the commanding general should direct, for five years. The sentence was approved by General Canby, commanding, and the claimant was committed to confinement at Fort Jefferson, where he remained for about nine months, when he was pardoned by the President of the United States.

The questions involved and the doctrines maintained by the respective counsel in the case of Miss Hill were urged upon the commission in this case. The counsel for the claimant further contended that the dealing in bonds of the enemy in New Orleans and transmitting them thence to England for sale was not a "relieving of the enemy with money," or in any manner a giving of aid to the enemy, and that the correspondence of the claimant with Violet involved no aid or comfort to the enemy, gave no information to them, and constituted no military offence. He cited the first article of the treaty between the United States and Great Britain of 3d July, 1865, (8 Stat. at L.) also Milligan's case, (4 Wall., 2;) Egan's case, (5 Blatchford, C. C. R., 320;) the Venus, (2 Wall., 259;) the Circassian, (*id.*, 158;) the Ouachita cotton, (6 *id.*, 531;) Coppel *vs.* Hall, (7 *id.*, 542;) Thornton *vs.* Smith, (8 *id.*, 12;) the Grapeshot (9 *id.*, 129.)

The memorial claimed \$500,000 damages. The claim was disallowed by the commission, Mr. Commissioner Gurney dissenting.

In the case of James McVey, No. 208, the claimant alleged that he was twice arrested. It appeared that the first arrest was within the enemy's lines, when he was detained for some four weeks to prevent his communication with the enemy. The second time he was arrested while in the act of carrying goods across the lines from the enemy's country, and was held in confinement several weeks. His claim was unanimously disallowed.

Substantially similar to this last case, in regard to the character of the arrest, were the cases of Isaac Milner, No. 207, in which an award

was made in favor of the claimant for property, but including nothing for the alleged arrest; of Samuel Simpson, No. 217, which was unanimously disallowed; of John Carew, No. 224, which was disallowed, Mr. Commissioner Gurney dissenting; of Henry F. White, No. 233, which was unanimously disallowed; and of John Gale, No. 247, in which there was an award for property, but including nothing on account of the arrest or imprisonment.

In the case of Joseph W. Scott, No. 226, the claimant, domiciled at Jacksonville, Fla., was there arrested by order of the commanding officer in November, 1864, on the charge of disloyalty, and detained in confinement for some three months. Jacksonville was an inland town, on the Saint John's River, which came into the hands of the United States forces in February, 1864; and from that time to the close of the war was occupied by them; but the rebel forces, most of the time, were within its immediate vicinity.

On the part of the United States it was insisted that the military commander was necessarily invested with absolute power for the control of the city; and that it was his duty to take such measures as should prevent inhabitants disloyally disposed from communicating with the enemy; and that nothing in the case of Mr. Scott showed an abuse of this authority.

An award was made in favor of the claimant in respect of property taken by the United States troops, but it included nothing for imprisonment.

In the case of James T. Munroe, No. 235, claimant had embarked at New Orleans in August, 1864, on board a steamer for Matamoras, Mexico, with the machinery for erecting a saw-mill at that place. The steamer was stopped at Fort Jackson on the charge of having contraband goods on board intended for Texas, brought back to New Orleans, and the claimant was there detained by the military authorities for two days on board the steamer, and for twelve hours in the military prison at that city. It appeared that, while he was in confinement, his trunk on board the steamer was broken open, either by the provost-guard or in consequence of their negligence, and money, wearing apparel, and other articles were stolen from it. On complaint made to Major-General Canby, in command of the city, an order was made by him declaring these transactions, if true, to be exceedingly discreditable to the guards, and directing the provost-marshal to take measures to bring the offenders to justice. An investigation was ordered, but the offenders did not appear to have been discovered, and no reparation was made to the claimant.

On the part of the United States it was urged that the arrest and detention were lawful and reasonable for the purpose of inquiry as to the character of the vessel, and that the United States were not liable to reclamation for the theft of the claimant's property.

An award was made in favor of the claimant for \$1,540, in which all the commissioners joined.

In the case of Susan B. Jackson, No. 255, the claimant, in behalf of herself and her four minor children, claimed damages for the arrest of John Jackson, the husband of the claimant, at Knoxville, Tenn., and his banishment within the enemy's lines, with his family, in January, 1864. It appeared that Dr. Jackson, the husband, had been a resident of Knoxville for some years and until after the breaking out of the war; that he had sent his family to England in August, 1861, and himself followed them in June, 1862; that he returned to New York in October, 1862, and in January, 1863, having obtained the proper permission, returned to Knoxville for the alleged purpose of disposing of his property there. Instead of disposing of his property he remained at Knoxville, and there entered into trade. Both before his departure for England and after his return, in 1863, he had been an open and active sympathizer with the rebellion, denouncing the United States Government and encouraging and aiding the rebels down to the surrender of Knoxville to the United States forces in September, 1863. Evidence was also given on the part of the United States showing conduct evincing a hostile spirit toward the United States Government. On the 29th January, 1864, the following notice was addressed to him by General Foster's provost-marshal:

Owing to your persistent disloyalty to the Government of the United States, it has been decided to send you and your family south of the Federal lines. You will, therefore, be prepared to start on receiving further notice.

The further notice was served on the 30th January, requiring him to be ready to depart on the 3d February, on which day Jackson and his family were sent through the rebel lines under a flag of truce.

An award was made in favor of the claimant in respect of property of her own appropriated to the use of the United States, but including nothing by reason of the arrest and banishment complained of.

Joseph M. P. Nolan, No. 272, was arrested by the military provost-marshal at Saint Louis, Mo., in October, 1861, on the charge of disloyalty to the United States, and of having written a letter to an alleged enemy of the United States in Canada, giving information as to military movements. He was detained in prison at Saint Louis till June, 1862, then transferred to the military prison at Alton, Ill., and there detained till August, 1863, when he was finally discharged. His release was offered him in December, 1861, and on one or two other occasions, on his giving his parole to do no act unfriendly to the United States. This parole he refused to give. Great and unnecessary hardships in connection with his confinement were alleged on the part of the claimant; and the proof conclusively showed that the prison in which he was confined at Alton was wholly unfit in its appointments and sanitary

condition for the confinement of prisoners, especially for the large number there confined; and that at times the treatment of the prisoners, including the claimant, was harsh and cruel.

An award was made in favor of the claimant for \$3,600, all the commission joining. I am advised that the majority of the commission, at least, held the original arrest of the claimant and his reasonable detention justified; but that his long confinement and improper treatment during it were not justified.

In the case of Mary Nolan, No. 273, the claimant alleged that she was arrested at Saint Louis by a detective in the employ of the United States authorities in September, 1864; taken before the provost-marshal at Saint Louis, and committed by him to the Chestnut-street prison, where she was detained for an entire day; and that she was there subjected to improper treatment. She claimed damages \$10,000. The evidence in her case showed that she was brought before the provost-marshal, apparently upon a subpoena, to testify in a case before him; that she refused to testify, and defied and insulted the officer, who committed her to the city prison, where she was detained for nine or ten hours. Her allegations of improper treatment were not sustained. The commission unanimously disallowed her claim.

In the case of John F. Parr, No. 285, the claimant, a resident of Nashville, Tenn., then in possession of the rebel forces, passed through the lines into Indiana, and thence to Buffalo, N. Y., in October, 1861. He went thence to New York City, where he bought some clothing, shoes, medicines, and other goods, and returned thence to Buffalo, where he was arrested immediately on his arrival, on the 20th of October; he was taken to Fort Lafayette in New York Harbor, there confined for about four months, and was finally discharged in February, 1862, without a trial.

An award was made in his favor for \$4,800, in which all the commissioners joined. I am advised that the award proceeded on the ground that though his original arrest and reasonable detention were lawful, his detention for four months without trial was held not justified.

In the case of Richard Hall, No. 318, the claimant was arrested in Maryland, on the 6th of March, 1864; was brought before a military commission on the charge of having unlawfully passed from the loyal States through the Federal and confederate military lines into the State of Virginia, and there held illegal intercourse with the enemies of the United States, and then returned through the lines in the same manner. The military commission found him guilty of the offence charged, and sentenced him to imprisonment in Fort McHenry, Maryland, for the term of four months, and to pay a fine of \$6,000, and to be imprisoned until the fine should be paid. He was accordingly imprisoned for the four months, and for twenty days thereafter, when he paid the \$6,000 and was released.

On the part of the claimant it was alleged that his visit to Virginia was without unlawful intent and for innocent and social purposes. This allegation was answered on the part of the United States by proof that the claimant took orders from the confederate military authorities at Richmond for military supplies, which he undertook to purchase for them, and that he returned through the lines with the purpose of executing such orders. The counsel for the claimant claimed that the military commission was without jurisdiction, citing the case of Milligan, (4 Wall., 2.) The counsel of the United States claimed that the offence was purely a military one and cognizable by the military tribunals under the Articles of War.

The commission (Mr. Commissioner Frazer dissenting) made an award in favor of the claimant for \$2,984. I am advised that this amount was made up of the sum of \$5,000, part of the fine of \$6,000 imposed, which the commission deemed excessive, reduced from United States currency in which it was paid to gold, and interest added to make up the amount of the award.

In the case of Llewellyn Crowther, No. 362, the claimant was arrested in Baltimore in July, 1863, taken before Colonel Fish, then provost marshal there, and detained in confinement at the Gilmore House for about eight hours. The arrest grew out of a quarrel between the claimant and two other persons at a hotel in Baltimore, of which complaint was made to Colonel Fish, and the claimant was charged with using seditious and disloyal language. He alleged that Colonel Fish, on the arraignment of the claimant before him, used language abusively and indecently violent toward him and toward his country and Queen. He claimed damages \$10,000, and the commission unanimously awarded him the sum of \$100.

In the case of John M. Vernon, No. 364, the claimant alleged that he had always been domiciled in England, the country of his nativity. It appeared, however, that he had resided in the United States most of the time since 1849, and had been there engaged in trade. He was in Europe at the breaking out of the war, but returned to the United States in June, 1861, and thence passed into the confederacy, remaining there, with the exception of a temporary absence in the latter part of 1861, till January, 1863.

He alleged that he had always maintained his neutrality between the United States and the confederate government; that in January, 1863, he sailed from the port of Charleston in the steamer *Huntress*, owned by himself and laden with cotton, principally owned by himself, for Nassau, N. P.; succeeded in passing out through the blockade, but on the day after his departure, and upon the high seas between Charleston and Nassau, the steamer took fire and was destroyed, the claimant with the master and crew escaping in two ship's boats. These boats were picked up by a

United States war-vessel on the ocean, on the 18th January, and the claimant was carried to Hilton Head, S. C., there transferred to another vessel, carried to New York, examined before the United States marshal there, and committed to Fort Lafayette, in New York Harbor, in which fort, and afterwards in Fort Warren, Boston Harbor, he was kept confined till October, 1865, when he was released upon his written pledge that he would "sail from Boston, Mass., by the earliest opportunity, and leave the United States of America, not to return without the special permission of the President thereof."

He alleged large losses resulting from his imprisonment, by the waste and destruction of his property in the Southern States during his imprisonment, and in consequence of his business being deprived of his personal attention; and claimed damages, in all, to the amount of £338,133.

The proofs on the part of the United States showed that, up to his departure from Charleston, in July, 1863, he had been largely and actively engaged in rendering aid to the confederate government in its war against the United States; that he individually, and as a partner in the firms of Vernon & Co., and Vernon, James & Co., had entered into large contracts with the confederate government for the supply of arms, ammunition, and military supplies, including twelve large rifled cannon, and large quantities of gun-barrels, rifles, pistols, powder, army clothing, shoes, blankets, &c.; that he had been engaged in the manufacture of arms during the war, at Wilmington, N. C., for the benefit of the confederate government. At the time of his capture some of his contracts were found upon him; these contracts also granting to his firm, on the part of the confederate government, certain privileges of purchasing cotton and tobacco, and transporting the same without hindrance, and exporting them to all ports except those of the United States, with convoy if desired. Correspondence ensued between Lord Lyons, Her Majesty's minister at Washington, and Mr. Seward, the Secretary of State of the United States; and upon submission to Her Majesty's legation of the proofs found upon the person of the claimant further intervention in his behalf was declined.

Mr. Stuart, then Her Majesty's acting minister at Washington, on the 23d September, 1863, addressed to Mr. Vernon the following letter:

SIR: I beg to inform you, in reply to your letter of the 19th instant, that I lately received a dispatch from Earl Russell, stating that your case had been fully considered by Her Majesty's government in communication with the law advisers of the Crown.

It appears to Her Majesty's government, judging by the evidence produced, that you are a born British subject, and it does not appear that you have obtained naturalization in the United States, or exercised political privileges as a citizen.

But taking other circumstances into consideration, and more particularly that you have identified yourself in the strongest manner with the fortunes of the so-called Confederate States, and that you were, when taken, actually engaged in rendering material assistance to the government of these States, although deriving a commercial profit from so doing, Her Majesty's government are of opinion that the United States Government are justified in treating you as a *de facto* belligerent.

The evidence, moreover, shows that although, during a residence of twenty-three

years in the Southern States, you paid occasional visits to England, you had no intention of returning to permanent residence in your native country, and that you were practically and *de facto* a willing citizen of the Confederate States, engaged in equipping their army.

Her Majesty's government, therefore, consider, under the circumstances, your release cannot be claimed as a matter of right merely because you were born a British subject, but Earl Russell desires that Her Majesty's legation should, nevertheless, endeavor to persuade the United States Government to mitigate or shorten your captivity.

I accordingly represented to the Secretary of State, on the 10th instant, that it would be a gratification to Her Majesty's government to learn that your captivity had been mitigated or shortened through the clemency of the United States Government, and your case is consequently again under consideration.

From that time forth Her Majesty's government uniformly and consistently declined any international interference for the protection of Mr. Vernon, and disclaimed all pretence of right to intervene in his behalf. Sir Frederick Bruce, then Her Majesty's minister at Washington, as late as 24th October, 1865, said in a letter to Mr. Vernon, in response to an application from him: "My instructions prohibit my interfering in your behalf."

A labored argument was filed on behalf of the claimant, by which it was contended that the imprisonment of the claimant without trial was utterly unjustifiable; that it was prolonged in a manner never contemplated by the British authorities; that while under restraint his treatment was indefensible, and that the order of banishment from the United States, and the subsequent refusal to revoke it, were outrages against all law and justice. That the decision of Her Majesty's government, justifying the treatment of the claimant by the United States Government as a *de facto* belligerent, was erroneous; that the condition of the claimant, at the time of his capture, was that of a neutral alien engaged in commercial transactions only with the confederate government, and that such transactions were not criminal and did not deprive him of his neutral character. That even if he had previously been an enemy by domicile, he had, when he embarked from Charleston on the *Huntress*, left the country of his former domicile without the intention of returning, and his native domicile, native allegiance, and native *status* had thereupon instantly reverted to him, and that the decision of Her Majesty's government, justifying his detention by the United States, and refusing to intervene in his behalf, could not be taken as prejudicing the claimant's individual right to reclamation under the rules of international law. The counsel for the claimant cited, in support of these propositions, the following authorities: 4 Blackstone's Com., 76; Halleck's Law of War, c. 29, § 3, p. 695; 2 Kent's Com., 49; *Inglis v. The Sailors' Snug Harbor*, 3 Pet., 99; Vattel, lib. 1, c. 12, § 218; 2 Brown Civ. & Adm. law, c. 7, p. 327; *The Venus*, 8 Cranch, 278; The cases of *Adlam*, No. 40; *Doyle*, No. 46, and *Tongue*, No. 49, decided by this commission; *Calvin's case*, 7 Coke; *Gardner's Inst. Int. Law*, pp. 448, 489; *Livingston v. Maryland Ins. Co.*, 1 Cranch, 542; *Wheaton's Elements*, part 4, c. 1, pp. 561 to

569; Halleck, c. 21, § 18, p. 503; *id.*, c. 29, § 3, p. 315; 1 Kent's Com., § 5, p. 73; Story's Conflict of Laws, c. 3, § 27, p. 61; Woolsey's Int. Law, p. 109; 1 Duer on Ins., pp. 515, 520; The Frances, 8 Cranch, 280, s. c. 1 Gall., C. C. R., 614; The Dos Hermanos, 2 Wheat., 77; The Friendschaft, 3 *id.*, 14; The United States *vs.* Guillem, 11 How., 60; The Ann Green, 1 Gall., C. C. R., 275; The St. Lawrence, *id.*, 267; Catlin *vs.* Gladding, 4 Mason, 308; The State *vs.* Hallett, 8 Ala. Rep., 159; 3 Phillimore, § 85, p. 129; *id.*, § 4, pp. 404, 604; Twiss, § 43, p. 83; De Bargh, c. 2, p. 36; Westlake, c. 3, § 40, p. 39; 2 Wildman, pp. 15, 43; 1 *id.*, p. 57; The Indian Chief, 3 Rob., 12; The Etrusco, *id.*, 31; The Harmony, 2 *id.*, 322; The Ocean, *id.*, 91; The Virginia, 5 *id.*, 98; Boswell's Lessee *vs.* Otis, 9 How., 336.

The commission unanimously disallowed the claim.

In the case of William B. Forwood, No. 394, the claimant, a British subject, domiciled in England, in October, 1861, landed at New York from the steamer City of Washington from Queenstown. He was arrested immediately on landing from the steamer, on information that he had, both in Liverpool and on board the steamer upon his passage, expressed himself as a warm friend of the rebellion, and that he was connected with a firm engaged in running the blockade, and upon the suspicion that his visit to New York was for the purpose of promoting correspondence with the enemy. He was detained at the office of the chief of police in New York for some three or four hours, his person and baggage examined, and he was then discharged. He claimed, as damages for his arrest, £5,000. The commission disallowed his claim, Mr. Commissioner Gurney dissenting.

In the cases of Stephen Jarman, No. 418; Robert Bowden, No. 419; Samuel Joseph Redgate, No. 420; and John Henry Ellsworth, No. 421; the claimants were respectively the master and passengers on the British steamship Peterhoff, captured as prize of war by the United States steamer Vanderbilt, near the Island of St. Thomas, in February, 1863. The case of the Peterhoff will be more fully reported under a subsequent head. Bowden, Redgate, and Ellsworth were respectively in charge of portions of the cargo of the Peterhoff, either as owners or consignees, or as agents for owners or consignees. The Peterhoff was taken, on her capture, first to Key West and thence to New York, where she was libelled in the United States district court. Jarman, Bowden, and Redgate were taken with the vessel to New York, and detained till their depositions, *in preparatorio*, were taken, when they were discharged. Ellsworth was discharged at Key West, without being taken to New York or examined as a witness. He was detained on board the Peterhoff from her capture, 25th February, till the 25th March, eighteen days after her arrival at Key West. Jarman, Bowden, and Redgate were examined as witnesses in New York on the 1st day of April, the fourth day after the arrival of the Peterhoff in New York.

Harbor, and were respectively discharged immediately after their examination.

On the part of the claimants, respectively, it was contended that the capture of the Peterhoff was unlawful, and the detention of these claimants, respectively, was likewise unwarranted by prize law.

On the part of the United States it was contended that the Peterhoff was rightfully captured on justifiable cause, and that the detention of these claimants as witnesses was warranted by the law and practice of the prize courts; and that as to Ellsworth, his release at Key West without examination as a witness, and without being taken to New York where the vessel was libelled, could not be considered as an aggravation of his imprisonment, nor as giving him any right of reclamation, which he would not have had if taken to New York and examined as a witness, as he lawfully might have been.

The commission unanimously disallowed all the claims.

The case of Philip George Beaumont Dean, No. 465, was of like character with the four last named. The claimant was captured on board the British brig Dashing Wave, (whose case will be hereafter reported,) off the mouth of the Rio Grande River, in November, 1863. He was rated as an able seaman on the brig, though in fact a passenger and a son of one of the owners of the brig. He was taken with the vessel to New Orleans, where the vessel was libelled; was examined as a witness *in preparatorio* 28th November, 1863, six days after the arrival of the vessel at New Orleans, and was then released. His memorial alleged that from that time till the 23d July, 1864, he was "detained on parole by the commissioners of the United States Government" at New Orleans, but his evidence showed no such detention or parole, and it appeared that his stay in New Orleans after his examination was a voluntary one, for the purpose of looking after the interests of the owners of the vessel and cargo.

His claim was unanimously disallowed by the commission.

In the case of George F. Cauty, No. 443, the claimant was a British subject, for several years domiciled in Central America, but from March to December, 1863, temporarily resident in the city of New York, engaged, as he alleged, in commercial enterprises connected with Central America. He was arrested in New York by the United States military authorities on the eve of his departure for Nicaragua by steamer, 24th December, 1863; detained in a prison in the city of New York for three days, then transferred to Fort Lafayette, and there confined till the 14th March, 1864, when he was discharged without trial and without information of the grounds of his arrest, except the general statement that he had been engaged in aiding the enemies of the United States, or violating the neutrality laws and regulations. It appeared that he was arrested in company with one Dr. Segur, in connection with whom he had been

engaged in purchasing arms, as was alleged by them, for the state of San Salvador, and that the circumstances of the purchase and shipment of these arms were such as to lead to the strong suspicion that they were in fact purchased and shipped for the use of the confederate government. Shortly after his arrest he was brought before a military commission at New York and interrogated as to his connection with Dr. Segur, and purchase of arms made by him. Most of these questions he refused to answer, on the ground that he had "been advised not to compromise himself or his friends in any shape or manner." He was thereupon remanded to prison. The charge that the arms were in any way designed to aid the enemies of the United States was not sustained by the proofs. The claimant alleged large pecuniary losses resulting from his imprisonment.

The commission made an award in his favor for \$15,700, Mr. Commissioner Frazer dissenting on the question of amount.

John Tovell, No. 446, a Baptist clergyman, was arrested at Nashville, Tenn., on the 9th November, 1862, on the charge of disloyalty to the United States, and of having in the course of a funeral oration delivered at Nashville used language strongly denunciatory of the military authorities in charge of Nashville, and tending to incite disaffection and rebellion. Nashville was a town within the insurrectionary states, captured by the United States in the spring of 1862, and held by them as a military post and under military government at the time of the claimant's arrest. He was detained in prison till the 8th June, 1863, and then banished into the confederate lines.

The commission awarded him \$830, Mr. Commissioner Frazer dissenting.

Henry R. Smith, No. 461, a physician, domiciled at Louisville, Ky., within a State not in rebellion, was arrested at that place by the military authorities of the United States, in July, 1864, on a charge of circulating treasonable documents, the documents in question being copies of a handsomely printed placard highly laudatory of the confederate General Robert E. Lee, as a patriot, Christian, and hero of unfaltering devotion to duty, &c. Louisville and the State in which it was situated contained a large proportion of sympathizers with the rebellion; and it was contended on the part of the United States that the circulation of this document by Dr. Smith was made with the direct purpose and intent of giving aid to the rebel cause; that it was calculated to give such aid, and that his imprisonment and detention were lawful military acts. The claimant was imprisoned for about fourteen weeks, and was then discharged without trial.

The commission gave an award for \$1,540, Mr. Commissioner Frazer dissenting.

Robert McKeown, No. 463, was in March, 1863, while employed as a ship-carpenter in the service of the United States Government on board the gunboat Benton, on the Mississippi River, near the mouth of the Yazoo, arrested by the commanding officer of the gun-boat, confined in the hold for about four days, then transferred to another gun-boat, and taken to Cairo, Ill., where he was discharged on the 5th April, after a confinement, in all, of thirteen days. He alleged improper treatment during his confinement, in consequence of which his health was materially injured. His arrest was upon the charge of disloyal and seditious language against the United States while employed on board the gun-boat.

The commission unanimously made an award in his favor for \$1,467.

5. *Prize cases.*

These claims related to vessels and their cargoes captured as prize by the United States during the war, and libelled in the prize-courts of the United States. In a portion of them final sentence of condemnation of the vessel or cargo, or both, was given by the courts of the United States, and the claim was now brought for the alleged value of such vessels and cargoes, alleging the condemnation to have been wrongful. In the other cases judgment of restitution was given by the courts, and the claim was now brought for damages by reason of the alleged wrongful capture and detention, and for costs and expenses incurred in respect of the same.

The whole number of memorials filed by different claimants for such captures was seventy-six, some of the memorials covering claims for several different vessels, as in the case of Sanders & Sons, No. 231, in which damages were claimed for the capture and condemnation of twenty-seven vessels.

The whole number of vessels captured, in respect of which and their cargoes claims were interposed, was seventy, in some instances many claims of different alleged owners being interposed in respect of the same vessel and her cargo, as in the case of the Peterhoff, in regard to which, and different portions of her cargo, twenty-two memorials were filed.

In respect of the capture of six of these vessels and their cargoes, or portions of the same, awards of greater or less amount were made against the United States.

In respect of the remaining sixty-four, the claims were wholly disallowed.

The whole amount claimed as damages against the United States in all these cases was \$5,560,924, besides interest, amounting, with the addition of interest for the average time claimed, to \$9,064,306.

The whole amount of the allowances, in respect of the six vessels as to which awards were made, was \$582,177.

The question was early raised, on the part of the United States, as to the jurisdiction of these prize cases by the commission, both in respect to cases where the decision of the ultimate appellate tribunal of the United States had been had, and to those in which no appeal had been prosecuted on the part of the claimants to such ultimate tribunal. As to the former class of cases, the undersigned may properly state that he personally entertained no doubt of the jurisdiction of the commission, as an international tribunal, to review the decisions of the prize-courts of the United States, where the parties alleging themselves aggrieved had prosecuted their claims by appeal to the court of last resort. As this jurisdiction, however, had been sometimes questioned, he deemed it desirable that a formal adjudication by the commission should be had upon this question. The commission unanimously sustained their jurisdiction in this class of cases, and, as will be seen, all the members of the commission at some time joined in awards against the United States in such cases.

The question as to the jurisdiction of the commission in cases where the party complaining had failed to prosecute his appeal from the prize court of original jurisdiction to the court of ultimate appellate jurisdiction, was raised by demurrer in several cases, and was argued at length in the case of the British brig *Napier*, Ryerson and others, claimants, No. 147. In that case the vessel was captured as prize in July, 1862, by a United States vessel of war near the mouth of the Cape Fear River, on which river is situated the port of Wilmington, in North Carolina, a blockaded port. She had sailed from Turk's Island, one of the Bahamas, with a cargo of salt, on a voyage alleged to have been destined for the port of Beaufort, N. C., then not blockaded, but in possession of the United States forces. She was taken by the captors to the port of Philadelphia, and there libelled in the United States district court for the eastern district of Pennsylvania, on the charge of attempting and intending to violate the blockade of the port of Wilmington, or other blockaded port in the insurrectionary States, and was condemned by that court as lawful prize, and sold under the decree. The vessel belonged to the port of Yarmouth, Nova Scotia, and was owned by British subjects there resident. No appeal appeared to have been taken from the decision of the district court by which the vessel was condemned. The memorial contained a general averment that neither the vessel nor cargo was "liable to confiscation" under the law of nations or the laws of the United States. A demurrer was interposed on behalf of the United States, specifying, among other grounds of demurrer, the following :

That the memorial does not show any appeal taken from the judgment of said court to the appellate tribunals of the United States having appellate jurisdiction thereof; and does not show that the remedy of the claimants for their alleged grievance under the laws of the United States had been sought or pursued to or in the judicial tribunal of the United States having ultimate appellate jurisdiction of the said matter.

On the argument of this case on demurrer, it was contended, on the part of the United States, that until the claimant has exhausted his remedy by appeal, and finds himself still aggrieved by the judicial tribunal of last resort, he has no ground of reclamation against the United States as the workers of injustice against him. That it is only in the event of final failure of justice, after pursuit of all the regular and ordinary means of redress, that any adjudication is to be considered as working wrong against a foreign litigant so as to entitle him to reclamation through the intervention of his own government. That the litigant who stops short of this and submits to the judgment of the inferior court, without seeking a review and reversal of such judgment by the appellate tribunal, in effect concedes the correctness of the judgment to which he submits. The counsel for the United States cited the report of Mr. Murray, (afterwards Lord Mansfield,) 1753, upon the reprisals made by the King of Prussia upon the Silesian Loan; Wheaton's History of the Law of Nations, pp. 210, 211; Wildman's Institutes, vol. 1, pp. 353, 354; Rutherford's Institutes, vol. 2, pp. 596-7-8-9; the Opinions of Dr. Nicholl and Mr. Pinkney in the case of the Betsy, before the commission under the seventh article of the treaty of 13th November, 1794, between the United States and Great Britain. (Wheaton's Life of Pinkney, pp. 193 to 276.)

Her Britannic Majesty's counsel, on behalf of the claimants in this and other cases, maintained that the doctrines of the publicists in regard to the necessity of a party aggrieved following out his complete remedy in the appellate prize courts of the nation of whose acts he complained, applied only to the question as to grounds of war and reprisals, and did not apply to the question of jurisdiction by an international tribunal, established by treaty, with the large powers and jurisdiction conferred by the treaty upon this commission. That under the terms of the treaty the commission had jurisdiction of all wrongful acts committed by the authorities of the United States upon the persons or property of British subjects; that the case of the claimant here was founded, not on an alleged denial of justice, but on an act alleged to be in violation of the law of nations, to wit, the wrongful capture of the claimant's vessel, which act had been adopted by the United States, whose armed force committed the wrong, and of which wrongful act the United States had received the benefit. He cited Dana's Wheaton, § 292; Grotius, book 3, c. 2, §§ 4, 5; Wildman, vol. 1, p. 197; the treaty between the United States and Great Britain of 1794, (8 Stat. at L., 121,) and the case of the bark Jones, before the commission under the convention of 1853 between the United States and Great Britain. (Report of that commission, p. 83.)

The commission held, in effect, that, under the treaty, they had jurisdiction, notwithstanding the failure of the claimant to pursue his remedy by appeal to the court of last resort; but that such failure on his part would be considered conclusive against him, unless satisfactory reasons

were given for the omission to appeal. It was thereupon unanimously ordered by the commission that the demurrers be overruled, but that the claimants, in all the prize cases in which appeals had not been taken and pursued to the court of last resort, should file with the commission their reasons for such omissions or failures to take and prosecute such appeals.

Subsequently the claimants in this case filed an affidavit, assigning as their reasons for not appealing from the decree of the district court the following :

1st. Because it was universally known in Philadelphia at the time said decree passed that appeals from the prize courts there by claimants were almost uniformly confirmed with costs. 2d. That public opinion there was in sympathy with such confirmations, under the suspicion that commercial men in this province (Nova Scotia) were in sympathy with the confederates. 3d. That the other owners of the *Napier* were not of pecuniary ability to procure the necessary sureties without much inconvenience, nor to sustain further heavy costs, and the burden of loss added to injury, especially as we had already expended nearly \$500 in counsel fees, agency, and travelling expenses connected with this seizure.

On the filing of these "reasons" the commission, without further argument, held them insufficient to excuse the want of appeal, and unanimously disallowed the claim. On the decision of the original question Mr. Commissioner Frazer read an opinion which will be found in the appendix, L.

Under the order for claimants in cases in which no appeal had been taken to file their reasons for non-appeal, such reasons were filed and passed upon in the following cases :

John W. Carmalt, No. 89, claimant for part of the cargo of the ship *Amelia*, captured and condemned by the United States, alleged, as his excuse for non-appeal to the Supreme Court of the United States, that the claimant, being then within the State of South Carolina, then at war with the United States, was unable to communicate with counsel in Philadelphia, where the vessel was libelled, or to take any measures for prosecuting such appeal on account of the war then raging.

The commission (Mr. Commissioner Frazer dissenting) held these reasons sufficient ; but subsequently, on the hearing on the merits, unanimously disallowed the claimant's claim, it appearing that he was at the time of the alleged capture domiciled within the Confederate States, and his property, therefore, liable to capture on the high seas as enemy's property.

In the case of the brig *Ariel*, R. M. Carson, claimant, No. 178, the reason assigned for non-appeal was that the claimant had never been aware, until the filing of the demurrer to his memorial before the commission, "that there could have been any appeal from the decision of the United States prize court that condemned the vessel and cargo."

The commission unanimously disallowed the claim, on the ground of the insufficiency of this reason.

In the case of the schooner *Argonaut*, Joseph B. Heycock, administrator, No. 263, and Frederick Wm. Ruggles, No. 264, claimants, the reasons for non-appeal assigned were that the counsel consulted by the claimants advised them that there was no necessity for taking such appeal, unless they intended to commence a suit in a civil court for damages, and that such claims, arising during the war, would, without doubt, be ultimately made the subject of arbitration, on which advice the claimants acted, and so omitted to appeal.

The commission unanimously disallowed the claim on the ground of the insufficiency of the reasons.

In the cases of the brig *Sarah Starr* and the schooner *Aigburth*, Cowlam Graveley, claimant, No. 292, the reasons assigned for non-appeal were that the claimant had become impoverished by his losses during the war, and the expenses of prosecuting his claims in the prize-court of original jurisdiction, and was unable to incur further expense; and also that he was advised that in the excited state of the country, and in view of the tenor of other decisions of the Supreme Court of the United States, he would not be likely to obtain impartial justice by such appeal.

The commission unanimously disallowed the claim for insufficiency of the reasons.

In the case of the schooner *Prince Leopold*, Henry A. McLeod, claimant, No. 306, the claimant assigned as reasons for his failure to appeal, his poverty and consequent inability to meet the drafts of his proctor and counsel in New York, and his expectation that his proctor would prosecute the appeal at his own expense, of the failure of which expectation he was not advised in season to secure the services of another lawyer on those terms.

The commission unanimously held the reasons insufficient, and disallowed the claim.

In the case of the *M. S. Perry*, otherwise known as the "*Salvor*," John McLennan, claimant, No. 370, the claimant alleged as reasons for non-appeal that the case of the vessel was hurried through the prize-court so rapidly that he, residing in Havana, had no opportunity to interpose any claim or defense; that he was advised by letter from Lord Lyons, Her Majesty's minister at Washington, that he would have full opportunity to defend, but that subsequently it appeared that the vessel and cargo had been condemned and sold some days before this letter was written, and that, though he attempted by correspondence to secure a defence of his rights, all such efforts proved futile and unavailing.

The commission accepted these reasons as sufficient, Mr. Commissioner Frazer dissenting, and directed the case to be heard on its merits. On final hearing the claim was disallowed, as will hereafter appear.

In the case of the ship *Will-o'-the-wisp*, J. G. A. Creighton and others, claimants, No. 378, the reasons assigned for non-appeal were, in substance, that they did not know the case was appealable, and that they supposed that their proper appeal was to their own government.

The reasons were held insufficient, and the claim disallowed, Mr. Commissioner Gurney dissenting.

In the case of the brig *Minnie*, Wm. H. Fisher, claimant, No. 379, the reasons for non-appeal were substantially the same as alleged in the case of the *Ariel*, No. 178, *supra*.

The commission unanimously disallowed the claim for the insufficiency of the reasons.

In the case of the schooner *Adelso*, Henry Horton, claimant, No. 437, the claimant assigned as his reasons for non-appeal, his poverty and his apprehensions of the danger of investing more money in law expenses.

The commission unanimously adjudged the reasons insufficient, and disallowed the claim.

The above were the only cases in which the sufficiency of the reasons assigned for non-appeal were specifically passed upon by the commission. In several other cases reasons for non-appeal were filed, but were not passed upon by the commission before the final disposition of the cases upon the merits.

The action of the commission upon those cases, respectively, will appear in the following notes, under the heads of the respective vessels.

It may be stated generally, that although in two or three cases, as above noted, the commission expressly held the excuse for non-appeal to be sufficient to entertain jurisdiction of the claim upon the merits, and although in other cases the commission did not expressly disallow the claim on the ground of the insufficiency of the reasons for non-appeal, no award was made against the United States in any case in which the claimants had not pursued their remedy in the prize courts of the United States by appeal to the court of last resort. I am advised that Mr. Commissioner Frazer was of opinion that nothing short of the misfeasance or default of the capturing Government, by means of which an appeal was prevented, was sufficient to excuse the failure to appeal, and that in accordance with this view he held the reasons assigned in every case before the commission to be insufficient.

The following cases cover all the prize cases not disposed of by the rulings of the commission on the question of non-appeal, as above stated :

The steamship *Dolphin*; Richard Henry Eustice, No. 166, claimant for part of cargo and for wages, &c.

This vessel was captured by a United States war-vessel while on a

voyage from Liverpool, ostensibly to Nassau, in the island of New Providence. She was taken into the port of Key West, and there libelled in the United States district court for the southern district of Florida. A claim was interposed in that court on behalf of William J. Grazebrooke, merchant of Liverpool, as the owner of the vessel.

The memorial of the claimant here alleged that the prize court refused to condemn the steamer as lawful prize, but she was, notwithstanding, with her cargo, taken possession of by the United States Government, and no part thereof ever returned to the owner. The proofs, however, showed that the vessel and cargo were regularly condemned in the prize court, and that no appeal was taken from the judgment of that court. Among her cargo were found 46 cases containing 920 rifles, and 20 cases containing 2,240 cavalry swords, all entered upon her manifest under the name of *hardware*. The proofs before the prize court satisfied Judge Marvin, before whom the trial was had, that the ultimate destination of both vessel and cargo was Charleston or Wilmington, both blockaded ports of the Confederate States; and he accordingly decreed condemnation of both vessel and cargo as lawful prize. The proofs in the prize court were not put in evidence before the commission, and the claimant submitted his case upon his own deposition, taken on notice, in the course of which he refused to answer various pertinent questions propounded on cross-examination, touching his experience as a blockade-runner, and his intentions in connection with the voyage of the *Dolphin*.

No reasons for non-appeal were filed, the case having been disposed of on the merits without waiting for such reasons.

The commission, without hearing any argument on the part of the United States, unanimously disallowed the claim.

The brig *Isabella Thompson*; James McDaniel, No. 168, claimant for vessel; Nehemiah K. Clements, No. 167, claimant for cargo.

This vessel was captured in June, 1863, by a United States cruiser on her return voyage from Nassau, New Providence, to Halifax, Nova Scotia, where she was owned, having been chartered by the owner, McDaniel, to William Pryor & Sons, of Halifax, agents of Sanders & Sons, of Nassau, for a voyage from Halifax to Nassau and back to Halifax. The claimant Clements in his memorial alleged that the vessel was chartered by himself. The claimant McDaniel in his memorial alleged that the charter was to Messrs. Wm. Pryor & Sons. The proofs in both cases showed that the charter, although in form to Messrs. Pryor & Sons, was taken by them as the agents of and for the benefit of Messrs. Sanders & Sons. She was taken by the captors into the port of New York and there libelled in the United States district court. Judgment of restitution was rendered in that court, but without costs or damages to the claimants. (*Blatchford's Prize Cases*, 377.) From so much of the decree as refused costs and damages the claimants respectively appealed

to the Supreme Court of the United States, where the judgment of the district court was affirmed, the supreme court saying that a case of probable cause was clearly made out, and expressing doubt whether the vessel and cargo should not have been condemned by the court below on the evidence before it. The case in the Supreme Court is reported under the name of "The Thompson," (3 Wallace Supreme Court Reports, p. 155.) The evidence showed that the vessel had arrived at Nassau from Halifax, and had discharged her outward cargo. She then took on board a cargo of turpentine and cotton, the product of the insurrectionary States, which she received in the harbor from on board another vessel, the Argyle, which had run the blockade from Wilmington, N. C., with this cargo, which she discharged directly upon the Isabella Thompson, having hauled alongside her.

The claimant Clements alleged in his memorial that he was the sole owner of the cargo which was purchased by him at Nassau; that he had made an arrangement with Messrs. Martin & Co., of Nassau, that they should have one-half the cargo when they paid for the same, but that Martin & Co. had never paid for their half, but after the seizure and redelivery of the cargo to the claimant, refused to pay for their one-half, and the claimant thereby remained sole owner. In the course of the litigation in the prize court this claimant had several times stated on oath that one-half the cargo belonged to him and one-half to Messrs. Martin & Co. In his testimony before the commission he stated in effect that the cargo was shipped by Messrs. Martin & Co., on joint account, and that after restoration to himself he settled with Martin & Co., he paying all expenses, and on such settlement it was agreed that he should be personally entitled to all damages recovered from the United States Government. Martin & Co. were shown to have been actively engaged in blockade-running; and their letters found on board the Isabella Thompson, to their correspondents at Halifax and New York, sufficiently indicated that the cargo in question was run out by the Argyle on joint account of themselves and the claimant Clements.

On cross-examination Clements refused to answer who constituted the firm of Martin & Co., and whether he was himself a member of that firm; whether they had general authority to make purchases for and shipments to him, or only special authority for particular purchases; whether they shipped goods on his account to the blockaded ports of the insurrectionary States, or purchased goods in those ports for him. He also refused to state more particularly the terms of the contract or agreement by which he became the owner of Martin & Co.'s half of the cargo, and evaded the question whether he ever paid for the cargo seized in the Isabella Thompson, and if so, to whom, how much, and when. He admitted himself the owner of the Argyle, the blockade-runner from which the Isabella Thompson received the cargo in question.

On the part of the United States it was maintained that the proofs

before the prize court, especially as supported by the testimony of the claimant Clements before the commission, clearly established that as to the cargo there was not only ample probable cause to justify the capture, but that the proof was ample for its condemnation; that the cargo was never landed at Nassau, and certainly never became a part of the common stock of that port, but was in the course of a continuous voyage from the blockaded port of Wilmington to Halifax, having been merely trans-shipped from the *Argyle* to the *Isabella Thompson*, without change of ownership or of original destination. That the evasive, uncandid, and untruthful testimony of the claimant Clements when testifying in his own behalf, and his refusal to answer on cross-examination legitimate and pertinent questions, exposed his claim to every possible implication against its merits. And that the only error committed by the prize court was in adjudging restitution instead of condemnation of the cargo. That if the seizure of the cargo was justifiable, the seizure and detention of the vessel were also justifiable to the same extent, and that her owner could sustain no claim for damages where the cargo was liable to condemnation or probable cause was found for its seizure, or that of any part of it.

The counsel for the United States cited *The Carl Walter*, 4 C. Rob., 207; *The Eliza Ann*, 1 Hagg., 257; *The Thomyris*, Edwards' Reps., 17; *The Ostsee*, 2 Spinks, 186; *The Leucade*, *id.*, 228, 234 to 236; 3 Phillimore, 534, 565, and authorities there cited.

Both claims were unanimously disallowed by the commission.

Thomas Grant's tobacco, No. 211.

The claimant in this case, domiciled at Petersburg, Va., during the war, claimed, among other matters in his memorial, \$787.50, "for the loss of tobacco shipped from Wilmington, N. C., consigned to Messrs. Charles R. Somerville & Co., London, captured by the United States vessels, which tobacco was taken to New York and placed in the hands of United States officials, who sold it at a high price." His memorial contained no other allegations concerning the tobacco or its capture. On demurrer by the United States the claim was unanimously disallowed.

The schooner *Pacifique*, *Nazaire Lemieux*, No. 215, claimant for the vessel; *Harvey & Co.*, No. 214, claimant for the cargo.

The *Pacifique* was owned at Quebec, Canada East, where the claimant *Lemieux* resided. She was chartered to the claimants *Harvey & Co.* for a round voyage from Saint John's, Newfoundland, to a port in the West Indies; thence to Cienfuegos, Cuba, and thence back to Saint John's. She sailed from Cienfuegos on the 12th March, 1863, on her alleged return voyage to Newfoundland, upon which her proper course would have taken her along the eastern shore of Florida. She was captured on the 27th March, 1863, by a United States war-vessel, off the port of Saint Mark's, in the Gulf of Mexico, on the western shore of Florida, and

so near the blockaded ports of Cedar Keys and Saint Mark's as to raise what Judge Marvin called "a very strong and violent presumption" in the mind of the capturing officer of a purpose to break the blockade. She was taken into the port of Key West, and there libelled in the United States district court. On the hearing before Judge Marvin judgment of restitution of the vessel and cargo was awarded on payment to the marshal of the pilotage and the costs of keeping the vessel while in port, probable cause of capture being certified by the judge, and costs and damages refused to the claimants.

From this judgment no appeal was taken by either party. The evidence before the prize court was not produced before the commission.

Under the order of the commission, requiring reasons for failure to appeal to be filed, the claimants filed an affidavit of Mr. Outerbridge, agent for the claimants Harvey & Co., in which he assigned as the reason for non-appeal that the master had no funds or credit at Key West to employ counsel to take an appeal from said decree, or to furnish bonds on appeal; that the master "believed that the release of the vessel and cargo imposed on him the duty of continuing his voyage;" and that he forthwith departed from Key West; and that "the claimants believed that the payment of the costs imposed, as well as the declaration of probable cause of capture, forming part of said decree, were within the ordinary discretion of the court or its officers and formed no ground of special exception."

No distinct or separate ruling was made by the commission as to the sufficiency of these reasons for non-appeal, the question having been submitted on the final hearing of the case on its merits, and in connection with the other questions involved in the case. Judge Marvin, on the hearing, after examining the testimony and comparing the log-book, came to the conclusion that, "strange as it might seem," the case was one of honest mistake of reckoning by the master, and that he, in fact, thought he was on the eastern side of Florida, and had mistaken the coast of Florida, which lay to the east of him, for a part of the Bahamas, some five degrees of longitude farther to the east; that in fact the vessel was innocent of any intent to break the blockade; but that the circumstances under which the vessel was found fully justified the capturing officer in making the capture, and warranted his belief that the vessel was actually engaged in an attempt to break the blockade.

On the part of the United States it was maintained—

1. That the claimants having omitted to put in evidence the proofs before the prize court, those proofs must be taken by the commission as sufficient to sustain the judgment of the prize court.

2. That on the evidence offered by the claimants themselves here, and on their letters to the British minister, and the protest of the master and officers of the schooner, the facts appearing fully sustained the conclusions arrived at by Judge Marvin. That under the circumstances

appearing to the capturing officer, he was justified in making the capture and taking the vessel in for condemnation. That the capturing officer in such case did not stand in the place of a judicial officer, compelled to decide at his own peril upon the ultimate liability of a vessel to condemnation as prize, but was only bound to act honestly and fairly and upon the circumstances reasonably apparent to himself. That the fact that the vessel captured was involved in suspicious circumstances, without fault on the part of her officers, but by an honest mistake, did not change the question as to the liability of the captor to damages for wrongful seizure.

3. That the excuse offered for failure to appeal from the judgment of the prize court was insufficient. That the master had power to bind his principals (the owners) for payment of counsel-fees and for the security of the sureties on the appeal-bond. That the statute regulating practice in the prize courts then in force (12 Stat. at Large, 760, sec. 7) gave full authority to the judge to extend the time for taking appeal; and that the claimants having made no application for such extension certainly could not allege that it would not have been granted on proper application. And that the second reason assigned for non-appeal amounted simply to an averment that the master, as representing the claimants, and the claimants themselves, on being advised by the master of the facts, did not consider that there was any just ground of appeal from the decree of the court.

The counsel for the United States cited 3 Phillimore, 566, 567, 576; the letter of Sir William Scott and Sir John Nicholl to Mr. Jay, *id.*, 554; the *San Antonio*, Acton's Rep's, 113; the *Ostsee*, Spinks's Rep's, 170, 171; S. C., 9 Moore's P. C. R., 150; the *George*, 1 Mason, 26; the *Leucade*, 2 Spinks, 228, 234 to 236; 2 Rutherford, 599.

On the part of the claimants it was contended that the case showed the vessel out of her proper course solely from the ignorance and bewilderment of her master, in consequence of thick weather and of the vessel having drifted by strong currents, unknown to the master, who was innocent of intent to break the blockade; that these facts were established by her log and papers, and would have satisfactorily appeared to the captors by a proper inspection of the same; that the captors, having neglected to avail themselves of the knowledge thus open to them from the books and papers of the vessel, were in fault, and should have been cast in damages and costs; that no appeal could, by law, be taken from the district court to the Supreme Court, the amount involved being less than \$2,000, and that, if an appeal could have been taken by law, the affidavit of Mr. Outerbridge sufficiently excused the failure to take it.

The counsel for the claimant cited the *Palmyra*, 12 Wheat., 1; the *Apollon*, 9 *id.*, 362; the case of the bark *Jones* before the commissioners under the convention of 1853, report of those commissioners, 83; the case of the schooner *John* before the same commissioners, report,

427; George Houghton's case before the same commissioners, 161; Malley *vs.* Shattuck, 3 Cranch, 458; Dana's Wheaton, 438 *n.*; La Amistad de Rues, 5 Wheat., 385; the Amiable Nancy, 3 *id.*, 546; the schooner Lively, 1 Gall., 315; Benedict's Adm. Jurisdiction and Practice, 2d ed., sec. 580, p. 345; sec. 512, p. 305; the United States *vs.* Haynes, 2 McLean, 155; Jenks *vs.* Lewis, 3 Mason, 503; Snow *vs.* Carruth, 1 Sprague, Mass. Adm. and Mar. Rep., 324.

In both cases the claims were disallowed, all the commissioners agreeing.

The bark Sally Magee; Charles Coleman, claimant, No. 232.

The memorial in this case was filed in the name of Charles Coleman, as surviving partner of the firm of Charles Coleman & Co., British merchants, domiciled in Rio de Janeiro from 1861 to 1865, for a quantity of coffee, part of the cargo of the bark Sally Magee, belonging to Richmond, Va., and owned by citizens of the Confederate States there resident. Coleman had in fact died about a week before the filing of the memorial, that fact being unknown to the attorneys who filed the memorial in his name, but for the benefit of the firm of Edmond, Davenport & Co., as hereinafter set forth. A question was raised as to the case being regularly before the commission on account of the death of the claimant before the filing of the memorial, but the commission, in October, 1872, ordered that the administrator of Coleman have leave to prosecute the claim. The case was as follows:

Edmond, Davenport & Co., a firm doing business at Richmond, Va., and composed of citizens of that city, in 1861, before the establishment of the blockade, shipped goods to the claimant's firm at Rio de Janeiro, with written instructions as to the investment of the proceeds in coffee. These written instructions were not produced; but the claimants gave evidence that the instructions were in effect to purchase coffee if procurable, at not over 10½ cents per pound, and ship it to the Richmond firm. Coleman & Co. purchased the coffee at a price not accurately shown, but said to exceed the limit given them by the Richmond firm by from one-half a cent to a cent per pound, and shipped it by the Sally Magee, consigned to Edmond, Davenport & Co., at Richmond. The vessel sailed from Rio de Janeiro for Richmond on the 12th May, 1861, and, as the claimant alleged, before intelligence of the war or the blockade had reached Rio de Janeiro. She was captured by a United States cruiser off the entrance of Chesapeake Bay on the 26th June, 1861, taken to New York, and there libelled in the United States district court, and the vessel and cargo, including the coffee in question, condemned as enemy's property. (See report of the case in the district court, Blatchford's Prize Cases, 382.) In the prize court Messrs. Charles M. Fry & Co. intervened on behalf of Coleman & Co., in respect of the coffee in question, claiming it as the property of

Coleman & Co. No express repudiation of the purchase by the Richmond firm was shown; nor did it appear that the Richmond firm was advised of the terms of the purchase until after the capture of the vessel. Two members of that firm were examined as witnesses before the commission, one of whom testified that, in view of all the circumstances, he thought his firm would have ratified the purchase if the vessel had arrived safely at her point of destination, while the other testified that he thought they would not have ratified it. Coleman & Co. appealed from the decree of condemnation of the district court to the Supreme Court of the United States, where the decree of the district court was affirmed, (3 Wall., 451.) The condemnation in the district court and the affirmation of the same in the Supreme Court both proceeded upon the ground that the coffee was, by the terms of the consignment, *prima facie* the property of the consignees, and that no sufficient proof had been made of the terms of the instructions given by the Richmond firm to Coleman & Co. in regard to the purchase, or of the violation of those instructions by Coleman & Co. The claim was prosecuted before the commission by Messrs. Edmond, Davenport & Co., at their own cost and for their own benefit, though in the name of Charles Coleman, surviving partner, under an assignment conveying to the former firm all the right, title, and interest of Coleman & Co. in the claim.

On the part of the United States, it was contended that the condemnation by the prize court was lawful, and was sustained by the evidence before that court; that no sufficient proof was there made to rebut the presumption arising upon the face of the papers, that the coffee was the property of the Richmond consignees; that if the facts were as alleged, Coleman & Co. were bound to make lawful proof of those facts before the prize court; that for that purpose they should properly have applied for the taking of further proofs, but that they made no such application. That having failed to make such proofs before the prize court, they could not now be allowed to make them *de novo* before the commission; thus establishing a state of facts different from that appearing before the prize courts. That even if such new proof before the commission were admissible, the claimant, by omitting to produce or account for the written instructions to Coleman & Co., had failed to establish even here any facts showing Coleman & Co. the owners of the coffee. That the parol evidence as to the terms of those instructions given on the part of the claimant was inadmissible, and that the claim being now prosecuted for the sole benefit of Messrs. Edmond, Davenport & Co., who were not British subjects, but at the time of the seizure enemies of the United States, and now citizens of the same, the court had no jurisdiction of the claim under the terms of the treaty. That the property having been captured and condemned, as the property of Edmond, Davenport & Co., enemies of the United States; having been bought with their money for their benefit; shipped to them in good faith; captured under circumstances which made the capture lawful if

the property was theirs; they having attempted to avail themselves of a technical right to repudiate the ownership of the property, and then having taken an assignment of the claim for the purpose of reimbursing themselves for the moneys invested on their behalf in the same property, and now prosecuting the claim in the name of a British subject wholly without actual interest in the property, the case was in substance one between the United States and its own now citizens and former enemies, and not covered by the spirit or equity of the treaty, and was not such a *bona-fide* controversy between a subject of Great Britain and the government of the United States as the treaty contemplated.

On the part of the claimant it was contended that the production of the written instructions to Coleman & Co. was sufficiently excused, and parol evidence of their contents was therefore properly admitted. That such proof might properly be made before the commission, though not made in the prize court. That Edmond, Davenport & Co. as assignees of Coleman, though citizens of the United States, were entitled to a standing before the commission, and *quoad* this claim were to be deemed British subjects, and that the claim might properly be prosecuted here by Edmond, Davenport & Co. as assignees of Coleman.

The claimant's counsel cited, under the last head, *Hunter vs. The United States*, 5 Peters, 173; *Turner vs. The Bank of North America*, 4 Dallas, 8; *Montalet vs. Murray*, 4 Cranch, 46; *Young vs. Bryan*, 6 Wheat, 146; *Mallan vs. Torrance*, 9 *id.*, 537; *Evans vs. Gee*, 11 Peters, 80; *Coffey vs. The Planters' Bank*, 13 How., 187.

The commission unanimously disallowed the claim.

The Sir William Peel; Edwin Gerard, No. 243, claimant for himself and insurers and underwriters.

This case and the three following cases, of the *Dashing Wave*, the *Volant*, and the *Science*, were intimately connected in character and circumstances, and were argued and submitted together. The Sir William Peel was captured by a United States war-vessel on the 11th September, 1863, while lying at anchor at the mouth of the Rio Grande, the stream dividing the territories of the United States from those of Mexico, and upon which, about forty miles from its mouth, lay on the right bank the Mexican port of Matamoras, and on the left bank the United States port of Brownsville, then in possession of the confederate forces. The place at which she lay was held by the United States prize courts to be within Mexican and neutral waters. She was taken by the captors into the port of New Orleans, there libelled in the district court of the United States, and on the 6th June, 1864, a decree of restitution was rendered in that court, certifying reasonable cause of seizure, and providing "that the question as to costs and expenses be reserved for further action." From this decree the United States appealed to the Supreme Court. Subsequently, on the hearing in the district court

of the question thus reserved, the following decree was made on the 3d June 1865 :

On the preliminary trial of this cause, considering that the position of the Sir William Peel, when captured, was a matter of doubt, and with a view to set this question at rest, the court allowed the captors further proof, and extended to the claimants the same privilege if they chose to accept it.

The result of the whole testimony satisfied the mind of the court that the Sir William Peel was captured when anchored south of the line dividing the waters of the Rio Grande, and when, therefore, she was in neutral waters. On that ground the court decreed her restitution ; but entertaining grave doubts as to the object of her voyage, so grave, indeed, that but for this consideration, that she was captured in neutral waters, the court should have decreed her condemnation, it is now ordered and decreed that the costs and charges consequent upon the capture be paid by the claimants, and that damages be refused.

From this decree the claimants appealed to the Supreme Court of the United States. Both appeals were heard together in the Supreme Court, and that court affirmed the judgment of restitution, including its certificate of reasonable cause of seizure, rendered June 6, 1864, and reversed the decree of 3d June, 1865, charging the claimants with costs, and remanded the case to the district court, with directions that no costs or expenses be allowed to either party as against the other. The case in the Supreme Court is reported in 5 Wallace, pages 517 to 536. The opinion of that Court delivered by Chief Justice Chase is as follows :

Regularly in cases of prize no evidence is admissible on the first hearing, except that which comes from the ship, either in the papers or the testimony of persons found on board.

If upon this evidence the case is not sufficiently clear to warrant condemnation or restitution, opportunity is given by the court, either of its own accord or upon motion and proper grounds shown, to introduce additional evidence under an order for further proof.

In the case now before us some testimony was taken, preparatory to the first hearing, of persons not found on board the ship, nor, indeed, in any way connected with her.

This evidence was properly excluded by the district judge, and the hearing took place on the proper proofs.

Upon that hearing an order for further proof was made, allowing the libellants and captors on the one side, and the claimants on the other, to put in additional evidence ; and such evidence was put in accordingly on both sides.

The preparatory evidence on the first hearing consisted of the depositions of the master of the ship, the mate, and one seaman. No papers were produced, for none were found on board ; a circumstance explained by the statement of the master, that all the papers belonging to the vessel, except the lighter-men's receipts for the cargo, were with the English consul and the consignees of the ship at Matamoras.

The depositions established the neutral ownership of the ship and cargo. They proved that the Sir William Peel was a British merchantman ; that she had brought a general cargo, no part of which was contraband, from Liverpool to Matamoras ; that this cargo, except an inconsiderable portion, had been delivered to the consignee at the latter port ; that the cotton found on board was part of her return cargo ; that it was owned by neutrals, and had a neutral destination ; and that the ship, when captured, was in Mexican waters, well south of the boundary between Mexico and Texas.

This proof clearly required restitution. The order for further proof was probably made upon the rejected depositions, which, though inadmissible as evidence for condemnation, may have been allowed to be used as affidavits on the motion for the order.

The further proof, when taken, was conflicting.

The weight of evidence, we think, put the vessel, at the time of capture, in Mexican waters; but if the ship or cargo was enemy property, or either was otherwise liable to condemnation, that circumstance by itself would not avail the claimants in a prize court. It might constitute a ground of claim by the neutral power, whose territory had suffered trespass, for apology or indemnity. But neither an enemy, nor a neutral acting the part of an enemy, can demand restitution of captured property on the sole ground of capture in neutral waters.

We must therefore look further into the case.

There is some evidence which justifies suspicion. Several witnesses state facts which tend to prove that the Peel was in the employment of the rebel government, and that part, at least, of the cotton laden upon her as return cargo was in fact rebel property.

There are statements, on the other hand, which make it probable that the Peel was in truth what she professed to be, a merchant-steamer, belonging to neutral merchants, and nothing more; that her cargo was consigned in good faith by neutral owners for sale at Matamoras, or to be conveyed across the river and sold in Texas, as it might lawfully be, not being contraband; that the cotton was purchased by neutrals and on neutral account, with the proceeds of the cargo or other money.

In this conflict of evidence we do not think ourselves warranted in condemning, or in quite excusing, the vessel or her cargo. We shall, therefore, affirm the decree by the district court, and direct restitution, without costs or expenses to either party as against the other.

This opinion sufficiently states the facts of the case as appearing by the evidence in the prize court, and those facts were not substantially changed by any evidence taken before the commission.

The claim before the commission was prosecuted by Edwin Gerard as assignee of the owners of the vessel and cargo, and as attorney-in-fact for the insurers and underwriters, some one hundred and fifty in number. The vessel and cargo were fully insured against capture as well as other losses; and upon the capture the owners abandoned vessel and cargo to the underwriters, who accepted the abandonment and paid as for a total loss. Pending the case in the district court, forty bales of cotton, part of the cargo, were sold by order of the court, and the proceeds paid into the registry of the court. And, pending the case on appeal in the Supreme Court, the vessel, her tackle, stores, &c., and the remainder of her cargo, having been appraised at the sum of \$857,642, United States currency, were, by order of the court, delivered to the claimants on their furnishing stipulations in the said appraised value with security. The claimants claimed the sum of £35,314.16.9, the sum of the amounts paid by the insurers to the assured less the net salvage obtained by the sale of the vessel and cargo, and the further sum of \$369,000, demurrage from the 11th September, 1863, to the 15th September, 1864, besides interest on both said sums.

The counsel for the claimant filed, in No. 391, a general argument applicable to the cases of the *Sir William Peel*, the *Dashing Wave*, the *Volant*, the *Science*, and the *Geziena Heligonda*. In this argument he maintained that the Rio Grande being the common boundary between Mexico at peace and Texas at war with the United States, and the navigation of the river being, by the law of nations as well as by the treaty of Guadalupe Hidalgo, free and common to the citizens of both republics, the

United States could not lawfully blockade that river so as to interfere with the free ingress and egress of neutral vessels engaged in trade with Matamoras, or with the right of such vessels to lie at anchor in the roadstead at the mouth of the Rio Grande, while engaged in lawfully discharging or receiving cargoes on neutral account through the custom-house at Matamoras, or so as to interfere with inland trade carried on across the Rio Grande, from Mexico to Texas or from Texas to Mexico. That the British trade with Matamoras was a legitimate trade according to established principles of public law. That these doctrines were fully recognized by the Supreme Court of the United States in the case of the *Peterhoff*, (5 Wallace, p. 28;) and by the courts of the United States in other cases, notably that of the *Labuan* in the district court of the southern district of New York. That it had also been fully recognized by the Secretary of State of the United States, in the diplomatic correspondence with the British legation, concerning the cases of the *Labuan*, the *Magicienne*, the *Peterhoff*, the *Sir William Peel*, and other cases; and by the legislative authorities of the same in appropriations for payment of the awards in the cases of the *Labuan*, &c.

That, notwithstanding the recognition by the courts and executive and legislative authorities of the United States of these principles, in practice they had been disregarded, and British merchant-vessels, whether found on the high seas and destined to the mouth of the Rio Grande, with cargoes consigned to Matamoras, or anchored off the mouth of the river and engaged in good faith in the discharge of neutral cargoes for Matamoras, and in taking on board cargoes purchased at that port on neutral account, had been subjected to capture and adjudication as maritime prize.

That these captures had been the subject of earnest but temperate remonstrance on the part of Her Majesty's government, and were regarded as violations of the just maritime rights of Great Britain, and as assumptions of belligerent power not warranted by the law of nations.

That the claims arising out of these captures were among the most important in the contemplation of Her Majesty's government in the establishment of the Joint High Commission, and by that commission, in the provisions of articles 12 to 17 of the treaty providing for the establishment and conduct of this commission. That this commission had full jurisdiction of the claims in question, and to review and overrule the final judgments of the prize courts of last resort of the United States.

That by the terms of the treaty, and of the "solemn declaration" subscribed by the commissioners pursuant to the provisions of the treaty, they were to decide each and all of the claims "according to justice and equity." That this provision gave to the present commission a broader and more comprehensive power than was given by the 7th article of the treaty of 1794 between the United States and Great Britain (8 Stat. at L., 121) to the commission provided for by that article, which was required to decide the claims referred to it according to "justice, equity, and the laws of nations." That the omission of the last-named element

of the prescribed rule of conduct from the present treaty was significant. That under the present treaty the judgments of the American prize tribunals were to be tested in each case by this commission according to the principles of "justice and equity" only. That "whether the law of nations justifies those decisions or not, unless they are *also* justified in the conscientious judgment of the commissioners by justice and equity, the compensation which they fail to give must be awarded to the parties." That "the inquiry is not limited to the question whether the law of nations entitled the claimants to compensation, but extends beyond that narrow range, and its broad scope is whether the parties are equitably entitled, under all the circumstances surrounding the cases, to receive indemnification for their losses." That it was the intention of the framers of the treaty to confer upon this commission "a more extensive jurisdiction, and greater power to do justice than was exercisable by the prize courts of the United States deciding according to the law of nations." That the technical rule of the prize courts, that "probable cause" not merely excuses, but in some cases justifies, a capture, is a hard rule, "admitted to be opposed to the fundamental ideas of justice and equity," and "only to be justified upon grounds which justify the extreme severity of the other operations of war." That therefore this commission was not bound to refuse damages in cases of restitution to the claimants, even "if they should think that the appellate prize court was warranted in its decision that there existed, in the sense of the prize law, probable cause of capture."

That if, however, it should be held that the only inquiry to be instituted by the commission in such cases is, "whether there were such reasonable grounds of suspicion as constitute what is technically called probable cause of capture," the commissioners should nevertheless adjudicate according to their own judgment of the facts and the law constituting the foundation of probable cause, "unembarrassed by the special and technical rules of the prize code." That though the commission is not therefore bound by the principles held by the prize courts in their adjudications, but has a larger and more equitable jurisdiction, yet the decisions of prize courts of the highest authority have established the duty of condemning captors in costs and damages where they have unjustly interfered with the operation of lawful neutral commerce. In this connection the counsel cited the cases of the *Elizabeth*, 1 Acton, 10; the *Ostsee*, 9 Moore's P. C. R., 150; the *Gerasimo*, 11 *id.*, 88; the *Newport*, *id.*, 187.

In answer to these propositions in the general argument the counsel for the United States fully admitted the propositions as held and recognized by the judicial, executive, and legislative authorities of the United States, that the *bona-fide* trade with Matamoras was a legitimate trade; that the United States could not lawfully blockade the mouth of the Rio Grande or the port of Matamoras, or any other Mexican port, nor interfere with the legitimate ingress or egress of neutral vessels engaged in trade with Matamoras, or with the right of such vessels to lie

at anchor in the roadstead at the mouth of the Rio Grande while engaged in the *bona-fide* discharge or receiving of neutral cargoes for or from that port.

He denied that in practice the United States had violated these principles or undertaken to assert rights inconsistent with them, but maintained that, on the contrary, the State Department of the United States, in its diplomatic correspondence, had recognized their validity; insisting only that the question of the application of these principles to the facts of each particular case was to be determined by the regular prize tribunals, which might be safely trusted to do entire justice in every case.

That the decisions of those courts in the various cases referred to by the counsel for the claimant, fully recognized those principles and applied them to the facts appearing in each case; and that in the disposition not only of those cases, but generally of all the prize cases arising during the war, those courts had carefully adhered to the principles of international law as recognized in the prize courts of all civilized countries, and had extended to neutral vessels and cargoes a degree of protection, to say the least, quite as ample and complete as that afforded by the prize courts of Great Britain, under the learned and widely known and recognized decisions of Sir William Scott and his successors in those courts.

He admitted fully the jurisdiction of the commission, and their power and duty under the treaty to review the final judgments of the prize courts of ultimate resort of the respective nations, as not conclusive upon the respective governments, which might intervene on behalf of their subjects against the judgments of those courts, such jurisdiction having been long since fully established by the direct decision of the commission upon that question, and not having since been disputed.

As to the rules and principles by which the commission were to be governed in their decisions upon these cases, he maintained that the rule prescribed by the treaty, that the commissioners should "impartially and carefully examine and decide to the best of their judgment, and according to justice and equity," had in no respect abolished or changed those well-settled principles, in accordance with which the tribunals of the civilized world have been accustomed to decide upon the validity of captures and the respective rights of belligerents and neutrals in relation to them. That "justice and equity" were not to be attained by a disregard of judicial precedents and established principles of judicial proceeding.

That to adopt the doctrine propounded by the counsel for the claimant was to substitute the mere fancy or caprice of a tribunal acting without guidance or authority, for those sound rules established and followed by judicial tribunals, in the light of the learning and experience of ages, for the very furtherance of "justice and equity." That true "justice and equity" are recognized by all judicial tribunals, municipal or international, as attainable only by well-defined and settled rules and princi-

ples of general application. That if this idea is lost sight of, substantial justice as well as substantial equity is at an end; and the rights of parties are committed to the absolute and uncontrolled will and caprice of the judicial officer, instead of the protection of the law.

That while, therefore, the right of the commission to sit in judgment upon the validity and correctness of the judgments of the prize courts of the United States upon these cases is not now questioned; such validity and correctness are to be determined only in accordance with the settled principles of prize law, as recognized by the two countries.

That in reviewing the judgments of the highest appellate courts of either of the two countries, high contracting parties to the treaty, the high reputation of those courts respectively, the weight uniformly given to the decisions of each by the other, and the rules of international comity and mutual respect, dictate that such judgments are not to be rashly or hastily overruled or reversed; but only on a clear showing of a violation of the rules of international law *in re minime dubia*. That the question to be decided in these cases is whether injustice has been done to the subjects of Her Britannic Majesty by the judicial tribunals of the United States; and that the commission certainly cannot find that such injustice has been done, unless they find that the well-settled principles of international law have been violated by those tribunals.

In answer to the proposition of the claimant's counsel, that the rule of the prize courts disallowing damages to the claimant where "probable cause" appears for the capture, is one of extreme severity as against the neutral trader, "opposed to the fundamental ideas of justice and equity," and "a hard rule, admitted to be such by all writers on the law of nations," the counsel for the United States cited the language of Dr. Lushington, in the case of the *Leucade*, (2 Spinks, 236,) as follows:

Lord Stowell administered the prize law on great and comprehensive principles. His object was that, on the whole, equal justice should be done to the rights of the belligerent and the just claims of neutral nations; but he did not seek in each particular case to do the most perfect justice. Many passages in his judgments might be cited to show this; whereby he declared that, though there might be hardships in particular cases, both to captors and especially neutrals, yet, on the whole, the balance was in favor of the neutral rather than against him. Lord Stowell used so say, though blockade was a hardship on a neutral, and the right of search was a hardship on a neutral, yet it was to be recollected the whole trade was always open to them—the carrying trade in time of war. He used always to say, and rely greatly on that rule of law, that, in the first instance, the case should be heard on the evidence of the claimants themselves, namely, the ship's papers and depositions.

In the case of the *Diligentia*, (1 Dods., 404,) where the captors complained of what Lord Stowell was about to do, Lord Stowell made the same answer; he told them, though they might complain in particular instances, yet he must adhere to the general principle, though the consequences might press hard upon them. Now, no person more readily acknowledged the truth of the principle, that a claimant should be indemnified for a capture made without probable cause, than Lord Stowell; no one more powerfully manifested it; but that will necessarily presuppose that the court is in possession of the truth.

It is equally contrary to common justice that a captor should be mulcted in costs and damages where he has faithfully performed his duty, and had, in truth, adequate cause for the seizure. Yet this cause of seizure might not appear on the face of the depositions and ship's papers. So it might be in blockade cases, and in numerous others which might be stated.

In the case of the *Sir William Peel* the following additional points were made on behalf of the United States:

1. That the vessel and cargo not having been charged with costs under the final decree of the Supreme Court, the only question before the commission was as to the right of the owners to damages; that the claimants were in no position to make such claim before the commission; that any right to damages in the prize courts was barred by the first decree of the district court of 6th June, 1864, which adjudged reasonable cause of seizure, and that from this decree or from any part of it the claimants had never appealed; that the "question as to costs and expenses" reserved by that decree was plainly the question only whether costs and expenses should be allowed against the claimants, their right to claim costs and expenses against the captors being barred by the certificate of "reasonable cause of seizure" contained in the same decree; that the claimants, having failed to appeal from so much of this decree as certified reasonable cause of seizure, must be considered, in the language of the letter of Sir William Scott and Dr. Nicholl to Mr Jay, (3 Phillimore, 554,) to have "acknowledged the justice of the sentence in that respect," and that within the rule of practice already settled by the commission the claimants, having neither appealed nor rendered any reason for not having appealed, their claim must be disallowed; that the only effect of the second decree of the district court of 3d June, 1865, from which the claimants did appeal, was to charge the claimants with the costs and charges of the captors, and that on their appeal from this decree they had had full relief by the judgment of the Supreme Court; that it had never been possible for the Supreme Court to award damages in favor of the claimant had they been so disposed, such damages being barred by the certificate of probable cause in the first decree of 6th June, 1864, from which the claimants had not appealed; that the claimants had therefore no standing before the commission to claim damages.

2. That the proofs before the prize court fully sustained the finding of that court of probable cause; and that the depositions of Clark and Haggard, taken in the district court, but rejected by that court on the purely artificial and technical rule that such evidence must come in the first instance from the vessel herself and those on board of her, were here competent evidence under the terms of the treaty, and entitled to be weighed by the commission without regard to such artificial rule of exclusion; and that those depositions not only greatly strengthened the case made before the prize court as one of probable cause, but in connection with the other proofs would have amply warranted a decree of condemnation.

3. That the fact that the vessel was taken in neutral waters, in no respect changed the case as to the respective rights of captors and claimants. That in such case it was only the neutral power whose waters had been violated that had cause of complaint; and such power only could be heard to raise the question of violation of her waters. That if the United States by this capture had violated any rights of Mexico, that was a question to be settled between the United States and Mexico. That so far as the questions between these claimants and the United States were concerned, the case stood in all respects the same as if the vessel had been captured upon the high seas.

In support of this point the counsel of the United States cited the *Purissima Concepcion*, 6 Rob., 45; the *Etrusco*, 3 *id.*, 31; the *Twee Gebroeders*, *id.*, 162; the *Eliza Anne*, 1 Dodson, 244; the *Diligentia*, *id.*, 412; the *Anne*, 3 Wheat., 447; 2 Twiss, 448; the *Anna*, 5 Rob., 373; the *Vrow Anna Catherina*, *id.*, 15.

4. That by abandonment, acceptance of the same, and payment as for a total loss, the entire right to any and all reclamation for damages or for the proceeds of the vessel passed from the owners of the ship and cargo to the insurers, and this irrespective of the question of the illegality of the contract of insurance, the contract being an executed one by the voluntary act of the parties. That these insurers were not to be taken as parties to the memorial, which was that of Mr. Gerard. That Gerard himself had derived by his assignment from the owners no title, their claims having vested in the insurers. And that if the assignment to him would otherwise have conveyed any interest, it was void as a champertous contract by which Gerard, an attorney, without any previous interest in the transaction, had purchased the claim as a matter of speculation and for the purpose of its prosecution against the United States. That by the law of England, the purchase of a chose in action by an attorney for the purpose of prosecution was illegal; that the same rule prevailed in most, if not all, of the United States; and that in practice it ought to prevail in international law. That such champertous purchases of claims, void by the common law of both countries, should not be recognized as lawful transactions, or be permitted as the basis of claims to be prosecuted by one of those governments against the other.

5. That the contracts of insurance by these insurers with the assured were deliberate contracts to indemnify British subjects for the consequences of attempted violation of the belligerent rights of the United States; that such contracts, when sought to be enforced in the courts of the United States, would be held void by those courts; that like contracts, in relation to attempted violation of the belligerent rights of Great Britain, if prosecuted in the courts of that kingdom, would be held void by her courts; that, therefore, in an international tribunal constituted by solemn treaty between the two governments, the comity of nations and a proper regard by one friendly government of the rights of another should preclude the admissibility of such claims. That

these contracts of insurance were distinguishable from "war risks" recognized by all nations as legitimate subjects of insurance, and such as were discussed among the American claims before the tribunal at Geneva; those were assurances of the merchant-vessels of a belligerent against capture by their enemy, and such as are recognized in all wars of maritime nations as a permissible and necessary means to the preservation of any commerce whatever to a belligerent; but these are deliberate contracts to indemnify a neutral who, by carefully excluding the "free from capture" clause, admits that he is engaged in an attempt to violate the belligerent rights of a friendly nation. That though the violation of blockade by a neutral is not held by international law to be strictly a crime, it is an unfriendly act, prejudicial to the character and interests of the neutral government of which the violator is a citizen, and to her honest and legitimate traders, and calculated to promote discord and hostility between friendly nations. That a contract to indemnify the citizen of a neutral government against the lawful consequences of his own wrongful act against a friendly government, should never be made a ground of reclamation by the government of the wrong-doer against the injured government, nor be countenanced by an international tribunal organized as a means of amicable settlement between two such governments.

On the part of the claimants it was contended in answer that the Supreme Court of the United States had in effect passed upon all the questions involved in the prize court, and had finally adjudged that the claimants should not have damages against the captors; and had determined that the fact of the capture having taken place in the waters of Mexico, a neutral and friendly nation, did not make the capture a wrongful one as between the captors and the claimants, Mexico not having intervened. That on the proofs in the case there were no such circumstances of suspicion as to afford probable cause of capture within the doctrines of the prize courts. That if such probable cause within the rules of those courts existed, it was plain, from the proofs before the commission, that actual injustice had been done to the owners of the vessel and cargo; that the vessel was engaged in a legitimate commerce; and that, according to justice and equity, the claimants should be reimbursed for the losses in consequence of the capture ultimately adjudged a wrongful one, even though the capture were held excused by the doctrine of probable cause under prize law. That the capture of the vessel within the neutral waters of Mexico was in violation of international law, and absolutely illegal and void. That the doctrines of the prize courts that such a capture could only be questioned by the government whose territory had been violated, applied only to the case of an enemy ship captured in neutral waters and not to the case of a neutral vessel so captured. That, even if that doctrine applied in the last-named case, it was only as a technical rule of the prize courts requiring an intervention there by the government whose territory had been violated, and

was not applicable in the case of an international tribunal, which should be controlled by the consideration that the capture was an illegal one under international law.

The counsel for the claimant cited Dana's Wheaton, §§ 171, 426, 428, 429, 430; the Vrow Anna Catherina, 5 Rob., 18; Lawrence's Wheaton, 215 n., 715; Wheaton on Captures, (appendix,) 341; the Anne, 3 Wheat. Rep., 435; the Richmond, 9 Cranch, 102; the Peterhoff, 5 Wall., 28; the Bermuda, 3 Wall., 557.

The counsel for the claimant also maintained that the insurers and underwriters were to be deemed parties to the memorial by Mr. Gerard, as their attorney in fact; that the assignment to Gerard was a valid one; and that the contracts of insurance were also valid and entitled to recognition and protection under international law.

The commission (Mr. Commissioner Frazer dissenting) gave the claimants an award for \$272,920. I am advised that the award was placed by the majority of the commission on the ground that the capture within the neutral waters of Mexico was absolutely illegal and void; and that the claimants were entitled to make reclamation on that ground, irrespective of any question of complaint or intervention on the part of Mexico.

In this case, in connection with the cases of the Science, the Volant, and the Dashing Wave, Mr. Commissioner Frazer read a written opinion, which will be found in the appendix, M.

The brig Dashing Wave; Charles Le Quesne *et al.*, No. 395, claimants for vessel; Edwin Gerard, No. 244; Simpson & Pitman, No. 396; McDowell & Halliday, No. 397; the Thames & Mersey Insurance Company, (limited,) No. 427; and the British and Foreign Marine Insurance Company (limited) *et al.*, No. 428, claimants for cargo.

This vessel was captured while at anchor off the mouth of the Rio Grande, on the 5th November, 1863; was taken into the port of New Orleans and there libelled in the United States district court. A decree was made in that court, 16th June, 1864, adjudging restitution of the vessel to the claimants; from which decree the United States appealed to the Supreme Court. Further proceedings were had in the district court on the question of costs and damages; and, on the 3d June, 1865, a decree was made adjudging that the costs and charges consequent upon the capture be paid by the claimants, and that damages be refused to them.

From this decree the claimants appealed to the Supreme Court. The Supreme Court affirmed the decree of the district court restoring the vessel and cargo; but directed that the costs and expenses consequent upon the capture be rateably apportioned between the vessel and the shipment of coin hereinafter named; and that the residue of the cargo be exempted from contribution. The district court determined, upon the

proofs, that the vessel when captured was anchored south of the line dividing the waters of the Rio Grande, and was therefore in neutral waters.

The Supreme Court held, on the contrary, that the proofs clearly showed her to have been anchored north of the division line above named and within the waters of Texas, then in possession of the enemies of the United States. The case in the Supreme Court is reported in 5th Wallace, pages 170 to 178; to which report reference is made for the statement of the peculiar facts of the case. No proofs were made before the commission substantially changing the facts as there stated.

Many of the questions involved in this case were identical with those involved in the case of the Sir William Peel above reported, and therefore need not be again stated.

Edwin Gerard, No. 244, claimed as assignee of the insurers of Messrs. F. DeLizardi & Co., the alleged owners of 12,000 British sovereigns, a portion of the cargo upon which, together with the vessel, the costs and expenses consequent upon the capture were apportioned by the decree of the Supreme Court.

Simpson & Pitman, No. 396, and McDowell & Halliday, No. 397, claimants as owners respectively of parts of the cargo exempted from contribution by the final decree, claimed damages by the depreciation of the cargo during its detention, and for costs and expenses to which they had been subjected.

The insurance companies, Nos. 427 and 428, claimed respectively as insurers of portions of the cargo in like manner exempted from contribution and which had been duly abandoned to them as insurers, and payments made by them respectively as upon a total loss.

Upon the two last-named claims of the insurance companies, questions were raised on the part of the United States, as to the validity of the contract of insurance in the same regard reported above in the case of the Sir William Peel, and also as to the right of the insurance companies to recover in respect of portions of the cargo owned by persons not appearing to have been British subjects. This last-named question was subsequently more distinctly raised and passed upon in the case of the Circassian, and will be hereafter reported under that case.

The commission unanimously disallowed all the claims.

The Brig Volant, John Amy *et al.*, No. 388, claimants for vessel; Edwin Gerard, No. 245, claimant for cargo.

This vessel was captured on the 5th November, 1863, at the mouth of the Rio Grande, taken into the port of New Orleans, and there libelled. By a decree rendered on the 11th June, 1864, the district court condemned the vessel and cargo as lawful prize. From this decree the claimants appealed to the Supreme Court, which court reversed the decree of condemnation, but held that the capture was justified by "probable cause," and adjudged restitution of the vessel on payment of costs and charges. The case is reported in the Supreme Court in 5th Wal-

lace, pp. 179, 180. It appeared that the vessel, when captured, was anchored within Texan waters.

The claimants in No. 388 claimed as owners of the vessel for re-imbursement of the costs and charges paid by them, and for damages by the detention of the vessel.

Mr. Gerard, in No. 245, claimed, as assignee of the insurers of the cargo to whom the same had been abandoned, and who had paid as for a total loss, about \$40,000, besides interest, for depreciation of cargo after the seizure, including the value of ninety-three cases of brandy, alleged to have been abstracted from the vessel while in custody of the officers of the district court.

The questions involved in respect to this vessel are substantially covered by the report of the foregoing case of the *Sir William Peel*, and by the report of the case in 5th Wallace.

The claim of Amy and others, No. 388, in respect of the vessel, was unanimously disallowed by the commission.

In the case of Mr. Gerard, No. 245, the commission made an award in favor of the claimant for \$1,785, Mr. Commissioner Gurney dissenting. I am advised that this award was made in respect of the brandy abstracted while in charge of the officers of the district court; and that the other claims for damages in the case were disallowed.

The bark *Science*; Thomas E. Angell and others, claimants, No. 391.

This vessel was captured at the same time and place with the *Dashing Wave* and the *Volant*, libelled in the same court, and the same decrees entered respectively as in the case of the *Dashing Wave*, and the same appeals taken by the respective parties to the Supreme Court. That court affirmed both judgments of the district court restoring the vessel, and charging her with the costs and expenses of capture, finding upon the proofs that she was, when captured, anchored within Texan waters, and that no excuse appeared for her being there. The case in the Supreme Court is reported in 5th Wallace, pp. 178, 179.

The counsel for the claimants, in addition to the points above cited in the case of the *Sir William Peel* applicable to this case, contended that the capture was one made in bad faith; that the *Science* had arrived off the mouth of the Rio Grande on the 11th August; that, immediately on her arrival, she was boarded by an officer of a United States blockading vessel, who examined her papers and inspected her cargo, and permitted her to anchor and discharge her outward cargo, and take on board a large portion of her return cargo; that the only allegation made by the capturing officer was that her outward cargo had included cloth of the character and description used for Confederate uniforms; that this allegation constituted no ground of capture, and even if originally it might have afforded probable cause of capture, it certainly could not, after the vessel had been allowed to lie three months in the offing, and take on board a valuable cargo of over

300 bales of cotton. That the fact of her being at anchor within Texan waters, if it existed, did not of itself constitute probable cause, there being no evidence in the case to indicate an intention of violation of the blockade; that, by international law and under the treaty of Guadalupe Hidalgo, the roadstead at the mouth of the Rio Grande was an open roadstead, where neutral vessels trading with Matamoras had a right to lie at anchor, whether north or south of the conventional line between the United States and Mexico established by that treaty; and that the United States could no more lawfully interfere with the enjoyment of that right than they could with the right of vessels in course of the same trade to navigate the mouth and current of the river; that the right to the navigation of the Rio Grande included the right to the means without which such navigation could not be reasonably enjoyed—among others, the right to moor in the roadstead at its mouth. That, even if the United States could claim an exclusive right to occupy the waters north of this line for the purpose of blockade, that a vessel honestly engaged in trade with Matamoras, and anchoring for that purpose on the Texan side of the line, was entitled to notice or warning before it could be treated as intruding on forbidden ground, and that a seizure without such notice was unjustifiable; that, in fact, the proofs failed to establish that the vessel was lying north of the dividing line, and that the blockading vessels, by omitting to apprise her that she was anchored in a place which they deemed an improper one, and by permitting her to be there and take on board her return cargo, were estopped to allege that her position was an unlawful one.

The claimant's counsel cited the *Terecita*, 5 Wall., 180; *Madeiras vs. Hill*, 8 Bing., 231; *Nailor vs. Taylor*, 9 Barn. & Cres., 718; *Carrington vs. Merchants' Insurance Company*, 8 Peters, 517; Mr. Jefferson's paper on the navigation of the Mississippi, 1 Am. State Papers, 254.

On the part of the United States it was contended that the *Science*, and the other vessels of her class, could not enter by reason of their draught of water, and never attempted to enter, the mouth of the Rio Grande, or to reach the port of Matamoras. That, conceding her full right to navigate that river and the waters through which its mouth was to be approached, and even for that purpose to pass over the blockaded waters of the Confederate States, it did not follow that she had the right, for her own convenience and for the delivery of her cargo into lighters, to cast anchor within those blockaded waters, and there lie for weeks in a position from which access, by means of lighters to the blockaded coast, was easier, by night or by day, than that to the neutral port for which her cargo professed to be destined. That the United States were lawfully entitled to blockade, and did blockade the sea-coast of Texas, and that such blockade would be wholly nugatory if a vessel in the condition of the *Science* could claim and exercise the right to cast anchor within the blockaded waters, and within three miles of the enemy's

coast, from which it was evident that she could, with great facility, hold communication with that coast.

The commission awarded to the claimant the sum of \$45,684, Mr. Commissioner Frazer dissenting.

The schooner *Matamoras*; Oliver K. King, administrator, claimant, No. 288.

This vessel was captured at the mouth of the Rio Grande at the same time with the *Dashing Wave*, the *Volant*, and the *Science*, and libelled in the United States district court at New Orleans. The district court, on the proofs, decided that, at the time of the capture, she was in Mexican waters, and gave judgment of restitution, certifying reasonable cause of capture, and refusing allowance of costs or expenses to the claimant. No appeal was taken from the judgment of the district court.

Under the order of the commission the claimant assigned as the reason of his omission to appeal, that, "in consequence of the short space of time in which to appeal, only thirty days being allowed for that purpose, and the detention of the mails, and the counsel in New Orleans not having taken the appeal, the time to appeal expired."

On the part of the United States it was claimed that the proofs showed probable cause of capture in the conduct and position of the *Matamoras*; but this was denied on the part of the claimants. The counsel for the United States insisted that no sufficient excuse was assigned for the failure to appeal.

The commission disallowed the claim, (Mr. Commissioner Gurney dissenting,) on the ground of the insufficiency of the reasons for failure to appeal.

The *Isabel*; George Wigg, claimant, No. 269.

This vessel was captured on the 23d September, 1852, on a voyage from Bayport, in Florida, to Havana; was taken into the port of Key West, there libelled in the United States district court before Judge Marvin, and condemned as lawful prize. An appeal was taken, under the then existing law, to the circuit court of the United States for the same district; and this appeal was subsequently, under the United States statutes of 3d March, 1863, (12 Stats. at L. 730, § 7,) and of 30th June, 1864, (13 *id.*, 311, § 13,) transferred by stipulation to the Supreme Court, in which court the claimant having failed to file the transcript from the court below, pursuant to the rules of that court, the case was dismissed, on motion of the United States, without appearance on the part of the claimant. The claimant alleged himself the sole owner of both vessel and cargo; and alleged that the port of Bayport, from which the vessel sailed, was not blockaded at the time of the capture or of the entrance or departure of the *Isabel* into and from that port. The fact of no blockade was sought to be established by the testimony of the master and

crew of the vessel, who testified that they saw no blockading vessels on entering or departing. The time of day or night of their entrance or departure was not shown.

The counsel of the United States relied on the official reports of the Secretary of the Navy and accompanying documents for the years 1862 and 1863, and upon the decision of the district court having judicial knowledge of the current historical facts of the day, as sufficiently establishing the fact of blockade. Documentary proofs were filed on the part of the United States going to show the claimant, Wigg, at the time of the capture of the vessel actually engaged in shipping munitions of war to the confederate government; and that both before and after the capture, he and the vessels which he owned or controlled were for a long time largely engaged in the like employment.

On the part of the United States it was maintained: 1, that the Isabel was lawfully captured in the actual course of a voyage in violation of the blockade; 2, that, by the failure of the claimant to prosecute his appeal to the Supreme Court, and procure an adjudication of that court upon the merits of his case, he was debarred from a standing before the commission; 3, that, by his personal acts in aid of the enemies of the United States in carrying on their war against those States, the claimant was debarred of any standing as a British subject before the commission; 4, that, by those acts, he had constituted himself an enemy of the United States, so that his property upon the high seas was liable to capture as enemy's property, irrespective of any question of blockade.

All these propositions were controverted on the part of the claimant. The commission unanimously disallowed the claim.

The steamship Pearl; Shand, Higson & Co., claimants, No. 270.

The Pearl was captured in January, 1863, by a United States cruiser, in the Atlantic Ocean, between the Bahama Banks and Nassau, on a voyage purporting to be from Queenstown to Nassau. She was taken into the port of Key West, and there libelled as prize on the alleged ground that her actual destination was for one of the blockaded ports. Mr. Geo. Wigg intervened as claimant in the district court, alleging himself the sole and absolute owner of the vessel. The district court adjudged restitution of the vessel and cargo. An appeal was taken by the United States to the Supreme Court, and that court reversed the decree of the district court, and adjudged condemnation of the vessel and cargo. (See report of the case of the Pearl, 5th Wallace, 574.)

The claimants here alleged that the vessel, though purchased by Wigg in his own name, was actually purchased by him as agent for Messrs. J. & T. Johnson, merchants of Liverpool, to whom she actually belonged, though registered in the name of Wigg. That J. & T. Johnson had, since the condemnation, assigned to the claimants, by way of mortgage, their claim upon the United States for the alleged wrongful capture and condemnation. No proofs were made by the claimants of the

title of the Messrs. Johnson, nor of the assignment of the claim by them to the claimants.

The claim was unanimously disallowed.

The schooner *D. F. Keeling*; Mary Hutchinson, claimant, No. 277.

This vessel was seized in the port of New York, on the 6th October, 1861, and libelled in the United States district court for confiscation under the statute of 13th July, 1861, (12 Stat. at L.,) as the property of an inhabitant of the State of Louisiana, then in rebellion against the United States. The claimant, Mary Hutchinson, interposed a claim to the vessel, denying that she was an inhabitant of New Orleans, alleging herself a native-born subject of Great Britain, and only transiently present in New Orleans upon a visit to relatives there residing. The district court found this allegation sustained by the proofs, and adjudged restitution of the vessel, certifying probable cause of seizure, and refusing costs or damages to the claimant. No appeal was taken from the decree of the district court. On the part of the claimant an affidavit of one Leetch was filed, excusing the omission to appeal on the ground that his own business required him to return home immediately to Mexico, (he having been at the time the agent of Mrs. Hutchinson,) and that Mrs. Hutchinson was not able to attend to the appeal in person, "by reason of age and infirmity." The claimant's memorial, verified by her own oath, alleged that she was born in 1813, making her forty-eight years old at the date of the decree of restitution. She claimed here damages by the detention of the vessel, and costs incurred in defense of the suit, \$18,063, besides interest.

The proofs before the commission showed that the claimant emigrated with her husband to New Orleans about 1850; that her husband died there in 1852, and that the claimant had ever since, up to the date of the deposition, (February, 1873,) been permanently domiciled in New Orleans.

On the part of the United States it was contended that the proof here fully showed the liability of the vessel to condemnation before the district court; that such condemnation was there defeated by false allegations and proofs; that, on the merits, the claimant was not entitled to damages; and that no sufficient reason was shown for her failure to appeal from the decree of the district court.

The commission unanimously disallowed the claim.

The schooners *Albion*, *Alert*, *La Criolla*, *Mary Stewart*, *Agnes*, *Fanny*, *Anne Sophia*, *Defiance*, *Nelly*, *Agnes*, *J. C. Roker*, *Florida*, *Anna*, *Wanderer*, *Mabel*, *Julia*, *Swift*, *Pride*, *Chance*, *Arctic*, *Brilliant*, *John W.*, *Industry*, *Time*; the sloops *Lida* and *Julia*, and the steamer *Lizzie*; *Sanders & Sons*, claimants, No. 281.

Messrs. *Sanders & Sons*, merchants of Nassau, filed their memorial claiming damages, in all \$142,643, besides interest, for the alleged wrongful capture and condemnation of the twenty-seven vessels above-named.

Their memorial contained simply a general averment that their vessels were lawfully engaged in trade "with certain ports of the United States which were held open by the Government of the United States to foreign commerce, and also with certain ports of Great Britain and other nations." That they were with their cargoes "unlawfully and wrongfully captured, in violation of the law of nations," by cruisers of the United States, and condemned and sold. A schedule of the different vessels, with copies of the respective registers, was filed with the memorial. No other proofs were filed for the claimants, and the claim was unanimously disallowed.

The schooner *Echo*; Peter A. Spearwater, claimant, No. 284.

The *Echo* was captured by a United States vessel of war on the 31st of May, 1863, on a voyage from Matamoras to New York; was taken into the port of Key West; there libelled in the district court; by which court judgment of restitution was awarded, certifying probable cause of capture, and refusing costs or damages to the claimants. No appeal was taken and no reason was assigned for the failure to appeal. In the testimony before the prize court the mate of the vessel testified that the cargo was taken on board at the mouth of the Rio Grande, and was purchased by the claimant himself in Brownsville, Texas, a town of the Confederate States; that the *Echo* lay off the mouth of the Rio Grande for about four months, from January till May, 1863; that, during most of that time, the claimant, the owner and master of the vessel, was in Brownsville and there purchased the cotton in question. The claimant himself, in his deposition denied these statements of his mate; and the district judge deemed the evidence insufficient to justify condemnation, but sufficient to establish probable cause.

The commission unanimously disallowed the claim.

The bark *Springbok*; John Riley, manager, &c., No. 442, claimant for vessel; S. Isaac Campbell & Co. and Thomas Stirling Begbie, No. 316, claimants for cargo.

This vessel was captured by a United States cruiser, on the 3d February, 1863, on the Atlantic Ocean, about one hundred and fifty miles east of Nassau, New Providence; was taken into the port of New York, and there libelled in the district court. That court rendered a decree of condemnation of both vessel and cargo. (See the report of the case, Blatchford's Prize Cases, pp. 434 to 463.) The claimants appealed to the Supreme Court, which affirmed the judgment of condemnation of the district court as to the cargo, but reversed it as to the vessel, adjudging restitution of the vessel, but without costs or damages to the claimants. (5 Wall, 1.)

The claimant John Riley, No. 442, claimed as manager of the London A 1 Insurance Association, the A 1 Guarantee Insurance Association,

and the Colonial A 1 Insurance Association, insurers of the vessel, and who had, on abandonment by the owners, paid as for a total loss. He claimed an award for £4,615, besides interest, damages for the detention of the vessel, loss of profits, and costs and expenses in the prize-courts.

The claimants S. Isaac Campbell & Co., and Begbie, claimed £68,378, the alleged value of the condemned cargo, and costs and expenses in the prize courts. The facts of the cases appearing before the prize courts are sufficiently set forth in the reports of the respective courts above cited.

In addition to the proofs before the prize courts the claimants gave evidence before the commission tending to show that the actual and ultimate destination of the cargo was Nassau, and that it was intended to be there sold in open market by the agent of the owners.

This evidence consisted of the testimony of the agent of the claimants at Nassau to that effect, certain letters from the claimants to said agent proved by him, and general proofs showing that there was at Nassau a market for the various kinds of merchandise constituting the cargo of the vessel.

Neither of the claimants for the cargo placed himself upon the stand to testify as to the actual destination or the intent of the owners in relation to it. The claimant Begbie was examined as a witness in behalf of Mr. Riley, the claimant in No. 442; and, on his examination-in-chief, testified merely that the cargo of the Springbok was to be discharged at Nassau; that there was no agreement for the continuance of the voyage, or for the employment or engagement of the vessel after her arrival at Nassau; and that the captain of the vessel knew nothing of the ownership of the cargo. On cross-examination he declined to answer as to whether he was, in the years 1862 or 1863, engaged in blockade-running speculations, and whether he was, at the time of her capture, the owner of the Gertrude or her cargo, (this being the vessel referred to in the report of the case in the Supreme Court, and the proofs upon the condemnation of which were invoked in the case of the Springbok.)

On the part of the United States evidence was given showing both the firm of S. Isaac Campbell & Co. and Begbie actively and largely engaged in blockade-running ventures, and in supplying by contract the confederate government with military supplies. These proofs included original contracts and letters between the claimants S. Isaac Campbell & Co. and the confederate secretary of war, and other officials, showing contracts by that firm, running through the years 1862 and 1863, for cannon, rifles, swords, accoutrements, gunpowder, shells, clothing, &c., in large quantities, and delivery of the same to the confederate government under such contracts to the amount of several hundred thousand pounds. Also evidence showing the claimant Begbie a contractor with the confederate government for the establishment of lines of fast steamers, to run in the service of that government between the blockaded ports of the Confederate States and ports in the West Indies.

On the part of the claimants it was contended that the proofs in the prize court failed to sustain the conclusions of the district court, that the vessel "was knowingly laden in whole or in part with articles contraband of war, with intent to deliver such articles to the aid and use of the enemy;" that the true destination of the ship and cargo was not Nassau, a neutral port, and for trade and commerce, but some port lawfully blockaded by the forces of the United States, and with intent to violate such blockade; and, further, that the papers of the vessel were simulated and false. That they also failed to sustain the conclusions of the Supreme Court, "that the cargo was originally shipped with an intent to violate the blockade; that the owners of the cargo intended that it should be trans-shipped at Nassau into some vessel more likely to succeed in reaching safely a blockaded port than the Springbok; that the voyage from London to the blockaded port was, as to cargo, both in law and in the intent of the parties, one voyage, and that the liability to condemnation, if captured during any part of that voyage, attached to the cargo from the time of sailing."

The counsel for the claimants further contended that the proofs filed for the first time before this commission conclusively rebutted these conclusions of each of the prize courts, and established the ultimate destination of both ship and cargo to be Nassau, the cargo to be there sold in open market.

The counsel called attention to an error in the opinion of the Supreme Court in stating sixteen dozen swords and ten dozen rifle-bayonets as forming part of the cargo of the Springbok, when in fact the proofs showed the vessel to have carried only one sample-case containing one dozen cavalry-swords and one dozen rifle-bayonets; and to the fact that, on the sale of the cargo, the entire proceeds of the swords and bayonets, and of the army and navy buttons, were only \$270 out of the gross proceeds of the entire cargo of nearly \$250,000; and that, including the army blankets, saltpetre, and all that portion of the cargo which could be regarded for any purpose as *quasi* contraband, the proceeds of such alleged contraband goods were less than one per cent. of the proceeds of the entire cargo. He urged that the judgment of the Supreme Court sustained "extreme pretensions of belligerent right to subjugate neutral commerce to its necessities," which ought not to be sustained by this international tribunal; that, to sustain the doctrine of liability to capture on the theory of "continuous voyage," it must appear that the cargo was intended as a part of the original and planned adventure to be carried from the neutral port to the enemy's port; that the extreme doctrine in this regard had been stated by the Supreme Court in the case of the *Bermuda*, (3 Wallace, 515,) as follows:

A voyage from a neutral to a belligerent port is one and the same voyage, whether the destination be ulterior or direct, and whether with or without the interposition of one or more intermediate ports, and whether to be performed by one vessel or several employed in the same transaction and in the accomplishment of the same purpose.

That the measure of this doctrine, as applied by the Supreme Court to the case of the *Bermuda*, was as follows :

What has already been adduced of the evidence satisfies us completely that the original destination of the *Bermuda* was to a blockaded port ; or, if otherwise, to an intermediate port, with intent to send forward the cargo by trans-shipment into a vessel provided for the completion of the voyage.

That, with the doctrine of continuous voyage as thus limited and defined, nothing in the case of the *Springbok* involves any necessary controversy ; but that this doctrine ought not to be extended so as to make guilty a trade between neutral ports to which the intercepted voyage was actually and really confined, by surmise, conjecture, or moral evidence not of a further carriage and further carrier, but only of a probability that such supplementary further carriage and *some* supplementary further carrier may or must have been included in the original scheme of the commercial adventure. That such a fiction of continuous voyage for the case of all trade between neutral ports, which has its stimulus from the state of war, made the belligerent prize court master of neutral commerce, and in fact established a paper blockade of the neutral ports in question, and left their commerce at the mercy of the belligerent. That the whole history of prize jurisdiction on the doctrine of continuous voyage shows that the province of probable reasoning has been confined to the question of intent, while the *corpus delicti*—the voyage to the enemy port—must be proved with the same definiteness of vehicle, port, and process of execution as is confessedly essential when the voyage is direct and simple.

That the original capture of the *Springbok* was wholly unjustifiable ; that the visitation and search disclosed nothing which rendered her voyage amenable to further molestation ; that there was nothing in the vessel, her cargo, or her papers, her position, or the circumstances of her capture, justifying the cruiser in sending the vessel into port for libel, on the speculation that it might be that the cargo was to go forward, and, if so, that fact perhaps might be provable ; that it was a marked case of speculative seizure and detention, not upon indications which the visit and search at sea disclosed, but for the purpose of a visitation and search in the prize courts for independent, extraneous, and argumentative grounds of suspicion.

That the trial in the prize court violated the essential principles of the prize jurisdiction as established between belligerents and neutrals, and in which the latter find the limits of their exposure and submission. That the rule of the prize courts that condemnation could only be justified upon the proof furnished by the vessel itself, her papers, and cargo, and the depositions of those on board, is not a mere matter of practice or form, but is of the very essence of the administration of prize law. That, accordingly, the invocation by the captors of the papers from the cases of the *Gertrude* and *Stephen Hart* as part of the primary proofs on which to condemn the *Springbok* and her cargo, was unprecedented, ac-

known by the Supreme Court to be irregular and not in accordance with the rules of proceeding in prize, and was not a mere irregularity in form but was subversive of the principles of prize jurisdiction.

That the passing of condemnation without giving the claimants an opportunity for further proof, was a manifest injustice ; and that the absolute condemnation without such opportunity for further proofs was contrary to the rightful system of prize jurisdiction.

That the presence of the trivial amount of contraband (as held by the prize court) could not be regarded either as evidence of its own destination or of that of its accompanying innocent cargo to an ulterior market, nor as ground for condemnation independent of the question of intended breach of blockade ; citing on this point Dr. Gessner's *Droit des Neutres sur Mer*, p. 122, as follows :

It is wrong to seize contraband goods in a neutral vessel when they are in such small quantities that their inoffensive character is thereby established. The *bona fide*^s is a question to be determined by all the circumstances of the case, among which the quantity is a very material ingredient.

In addition to the above, the counsel for the claimant cited the following :

The letter of Sir Wm. Scott and Sir John Nicholl to Mr. Jay, 3 Phillimore, 551 ; Story on Prize Courts, (by Pratt,) pp. 3 to 10, 17, 18, 24 to 26 ; Wheaton's Elements, part 4, c. 2, § 15 ; Trumbull's Reminiscences of his own Times, 193 ; the decision of the Geneva Tribunal upon the case of the Florida, acquitted in the vice-admiralty court at Nassau on the charge of violation of the neutrality act of Great Britain ; The Polly, 2 Rob., 361 ; The Maria, 5 *id.*, 635 ; The William, *id.*, 385 ; The Thomyris, Edwards's Reps., 17 ; 3 Phillimore, 358 ; 5 Rob., 334.

On the part of the claimants of the vessel it was contended, in addition to the positions above stated, that it was found by the Supreme Court that her papers were regular and her voyage a *bona fide* one between London and Nassau ; that the papers were all genuine, and there was no concealment of any of them, and no spoliation ; that the owners were neutrals, appeared to have no interest in the cargo, and could have had no knowledge of its alleged unlawful destination ; that these conclusions of the Supreme Court upon the evidence before it were strengthened and completely sustained by the additional testimony taken before the commission ; that the grounds on which the Supreme Court denied costs and damages to the claimants of the vessel, to wit : misrepresentation by the master on his examination as to his lack of knowledge of the grounds on which the capture was made, and the fact that he had signed bills of lading which did not state truly and fully the nature of the goods contained in the bales and cases mentioned in them, were unsustained as matters of fact by the evidence, and, even if sustained, were in themselves not of the least significance, and did not and could not affect the interests or issues involved in the capture ; that, so far as the vessel and her owners were concerned, her voyage was

honest, her papers fair, and the good faith of the charter-party absolute and unimpeachable, and the declarations and conduct of her captain not so obnoxious to just criticism as to justify the infliction of punishment upon the innocent owners.

On the part of the United States it was maintained that the conclusions arrived at by the Supreme Court as above stated, and upon which the decree of that court condemning the cargo was based, were fully sustained by the evidence before the prize court. That the claimants of the cargo had, by the judgment of the Supreme Court, full notice of the grounds on which the cargo was condemned, those grounds relating principally to their own previous conduct in furnishing military supplies to the confederate government and in running the blockade, and to the presumption raised by the circumstances of the case as to their own design and intention in regard to the destination of the cargo. That, notwithstanding this notice, they had failed to avail themselves of the opportunity afforded them before the commission to testify as to the facts and conclusions thus found by the Supreme Court; and that in the case of Mr. Begbie, when placed upon the stand involuntarily, he had refused to answer concerning these very matters. That this failure and refusal to testify on the part of the claimants was to be taken as in effect an admission of the correctness of the conclusions of the court.

That by the evidence adduced before the commission the fact was fully established that all these claimants of the cargo were extensively engaged in running the blockade, and also in furnishing military supplies to the enemy. That the facts thus proved went strongly to confirm the conclusions of the court that the cargo was destined and intended for trans-shipment to and delivery in the Confederate States, and not for a market at Nassau. That they also established that these claimants legally and morally were not neutrals, but enemies of the United States actually engaged in the prosecution of the war against those States; and that, as such, their property on the high seas was liable to capture without regard to the question of blockade. That the question of national character in such case was always a question of the individual national character of the owner, and not of his national character as established by paramount allegiance, citing the *Anna Catherina*, 4 Rob., 119; the *Vigilantia*, 1 *id.*, 1; the *Vriendschap*, 4 *id.*, 166, and the authorities cited in 3 Phillimore, 605, 606. That these proofs also precluded the claimants from a standing before this commission as neutral British subjects. That as to the vessel, the capture and condemnation of the cargo being lawful, the seizure of the vessel and taking her into port was also lawful as the sole means of reaching the cargo which was lawful prize, and that in such case the vessel was not entitled to costs or damages.

The commission unanimously disallowed the claim for the cargo in No. 316. In the claim for the vessel, No. 442, they unanimously awarded to the claimant the sum of \$5,065. I am advised that this award was made in respect of the detention of the vessel from the date of the

decree of the district court to the date of her discharge under the decree of the Supreme Court, the latter decree having established that the vessel should have been discharged by the decree of the district court.

The steamship *M. S. Perry*, alias *Salvor*; John McLennan, claimant, No. 370.

This vessel, then known as the *Salvor*, was owned at the breaking out of the rebellion by James McKay, a citizen of Florida. In September, 1861, McKay took her to Havana, and there went through the form of a sale of the vessel to McLennan, the present claimant, who caused her to be registered in his name at the British consulate at Havana, and re-christened her the *M. S. Perry*. A bill of sale was given by McKay to McLennan, specifying the nominal consideration of \$32,000. On the 13th October, 1861, she sailed from Havana with the ostensible destination of Nassau, but with written instructions to go to the main-land of Florida and there land Donald McKay, a son of the former owner, who went as a passenger, together with several negro slaves of the former owner, McKay. McKay, senior, himself sailed with her for Nassau, holding a power of attorney from McLennan, authorizing him to collect the freight at Nassau.

She was captured on the night of the 13th October, at a point between the Dry Tortugas and the coast of Florida, being headed for the western coast of the peninsula of Florida, and in a position quite wide of the proper course to Nassau, and separated from that port by the whole width of the peninsula of Florida and the waters intervening between that peninsula and the Bahamas. She was taken into the port of Philadelphia, there libelled in the district court, condemned, and sold. No appeal was taken from the judgment of the prize court; but the commission held, as has been already stated, the reasons assigned for the failure to appeal sufficient. The proofs taken before the prize court were not put in evidence before the commission.

From the testimony taken before the commission, it appeared that McLennan was a merchant's clerk in Havana, not engaged in shipping, and owning no interest in any other vessel than the *M. S. Perry*. When examined himself as a witness, McLennan refused to say whether he possessed any property or money to enable him to make such a purchase; but it appeared that he gave McKay his promissory notes for the amount of the purchase-money at six, twelve, and eighteen months, without any security for their payment by mortgage on the vessel or otherwise. It did not appear that anything had ever been paid on the notes; and the claimant, when asked on cross-examination whether they had ever been paid, declined to answer. McKay remained in the sole actual management of the vessel after the sale, and employed the captain, the chief engineer, and the ship broker who obtained her freight. McKay also held a power of attorney from McLennan to recover and receive whatever indemnity or compensation should be awarded by the commission

in the premises; he verified the memorial filed by the claimant; and he alone appeared to have procured the attendance of witnesses, and to have prosecuted the case before the commission.

A considerable portion of the cargo of the *M. S. Perry*, upon her capture, consisted of arms and ammunition, of the ownership of which no proof was made, and for which no claim was prosecuted before the commission.

On the part of the United States it was maintained that these facts clearly indicated the pretended sale by McKay to McLennan to be colorable merely, and that upon them the claimant had shown no title to recover; that the direction to the vessel to land young McKay and the negro slaves on the coast of Florida was an attempt to violate the blockade, and justified the capture; that the omission of the claimant to produce the testimony before the prize court left the judgment of that court to be presumed fully sustained by the evidence, and that in the absence of that evidence the commission could not declare the judgment erroneous.

The commission unanimously disallowed the claim.

The steamship *Granite City*; Edward Pembroke, claimant, No. 377.

This vessel was captured on the 22d March, 1863, on a voyage from Nassau, at which port she had cleared nominally for Saint John's, New Brunswick. She had shortly before taken a cargo of merchandise from Nassau, through the blockade, to Wilmington, N. C., and succeeded in getting through safely, though fired at by the blockaders, and had also succeeded in running out a cargo of cotton through the blockade. In his deposition *in preparatorio*, her master, after repeated refusals to state to what port the vessel was actually bound at the time of her capture, finally voluntarily stated, at the end of his deposition, "that he was bound to run the blockade into some confederate port wherever he could get in; and if he could not get in, to go elsewhere." The proof was unquestioned that she was captured in the prosecution of a voyage designed to violate the blockade. During the pursuit by the captors, and immediately before the capture, a package of papers, of whose contents the captain professed himself ignorant, was burned by his orders.

She was libelled in the United States district court for the southern district of New York, and a decree of condemnation was rendered by that court. (See report of the case, *Blatchford's Prize Cases*, 355-357.) Pending the proceedings in the district court, and before the decree of condemnation, the vessel was taken for the use of the United States at an appraised value, under the United States statute of March 3, 1863. (12 Stat. at L., 759.) The cargo was sold under the decree. The claimant alleged himself the owner of the vessel and cargo, and claimed damages, \$462,000, besides interest. No appeal was taken from the decree of the district court. The claimant filed, under the order of the commission, a statement of the reasons for his failure to appeal, alleging in effect

that the decree of condemnation was by default, the claimant not having appeared in the prize court, and that, the vessel having been taken by the United States, he had no funds, or means of securing funds, wherewith to appeal.

The case was decided without a specific decision upon the sufficiency of these reasons.

On the part of the claimant it was contended that the capture was illegal, in that the vessel had received no warning, and that she was captured on the high seas, and not in the act of violating the blockade by crossing that part of the sea which had been conquered by the blockading power. That the declarations of the master, as to the object and intent of the voyage, did not constitute the offence of violating the blockade, nor authorize the capture. That the fact of the former running of the blockade was not to be taken as proof of the illicit character of the voyage in the course of which she was captured. That the spoliation of papers shown did not constitute sufficient ground of condemnation, and generally that the grounds of condemnation assigned by the court were insufficient under well-settled principles of international law, and without precedent in maritime jurisprudence. That the prosecution of an appeal from the decision of the prize court was not necessary to lay the foundation for reclamation before the commission. That the appropriation of the vessel to the use of the United States before condemnation was an unlawful act, and of itself gave sufficient ground for reclamation. That that act deprived the prize court of jurisdiction, the proceeding being *in rem*, and the subject of the litigation, therefore, must necessarily be before the court, in order to sustain their jurisdiction.

The counsel for the claimants cited the case of the bark *Jones*, before the commission under the convention of 1853, between the United States and Great Britain; also Kane's notes of decisions by the board of commissioners under the convention with France, of July 4, 1831; *The Euphrates*, 1 Gall., 451; *The Diana*, 2 *id.*, 93; *Smart vs. Wolfe*, 3 T. R., 329; *The Eole*, 6 Rob., 223; *Jennings vs. Carson*, 4 Cranch, 23; *Halleck's Int. Law*, pp. 763, 764, §§ 16, 17; *The Pizarro*, 2 Wheat., 227; *Bernardi vs. Motteaux*, Doug., 581; *The Wren*, 6 Wall; *Fitzsimmons vs. The Newport Ins. Co.*, 4 Cranch, 185; *Calhoun vs. The Ins. Co. of Pa.*, 1 Binney, 293; *The Betsey*, 1 Rob., 280; *The Vrow Judith*, *id.*, 128; *The Columbia*, *id.*, 130; *The Vrow Joanna*, 2 *id.*, 91; *The Neptunus*, *id.*, 92; *The Spiece and Irene*, 5 *id.*, 76; *The Shepherdess*, *id.*, 235; *The Apollo*, *id.*, 256; *Vattel*, book 3, § 117.

The commission unanimously, and without hearing any argument for the United States, disallowed the claim.

The bark *Empress*; John Loft, mortgagee, claimant, No. 387.

This vessel was captured off the mouth of the Mississippi River, in November, 1861, sent into the port of New York, and there libelled for

adjudication as prize in the district court. The district court adjudged condemnation of vessel and cargo, (Blatchford's Prize Cases, 175.) An appeal was taken to the circuit court of the United States for the same district, under the practice then existing, which court reversed the judgment of the district court and awarded restitution, (*id.*, 659,) but without costs or damages to the claimants. Pending the proceedings in the prize court the vessel was sold and the proceeds, less the costs taxed against the same, were paid into the hands of the proctors of the claimants in the prize court, Pearson and others, the owners of the vessel.

The memorial alleged that this money was attached in the hands of the proctors by creditors of Pearson, and that Pearson's interest in the same was appropriated to the payment of the debts due from him to the attaching creditors. The claimant, Loft, alleged himself the holder of a mortgage given by the owner, Pearson, to him to secure the sum of £1,000 and interest, which mortgage was wholly due and unpaid. It alleged that the claimant had never received any notice of the capture of the bark, except as he learned the fact from the owners some time after the capture, and that he was then informed by the owners that they were taking the necessary and proper steps in the law courts for the purpose of protecting their interests.

The memorial also alleged that the bark, at the time of her capture, was worth the sum of £4,000, and that it became largely depreciated in value by being suffered to remain without repairs, and without proper care being taken of it during the time it was detained prior to the sale. The claimant claimed the amount of his mortgage, £1,000 and interest.

His counsel contended that the decree of the circuit court having ordered the restitution of the vessel to the claimants free of all costs and charges, it was plain that that decree had not been executed, over \$2,000 having been retained from the proceeds as costs and charges, and the proofs failing to show that the remainder of the proceeds even were ever paid over in any manner under the decree of the court.

On the part of the United States, it was contended that from the memorial itself it appeared that the proceeds of the vessel were regularly paid over to the proctors of the owners, the only claimants appearing in the prize court, excepting only costs allowed by the court as claimants' costs out of the fund. That it further appeared from the memorial that these funds thus paid over to the proctors were appropriated by regular judicial process to the payment of claims of attaching creditors of the owners. That, if the claimant, Loft, as mortgagee, had a valid lien upon the vessel, that lien could have been followed against the proceeds due, had he seen fit to take the necessary steps for that purpose; and that he having failed to do so, his lien had been lost by his own negligence. That, as to the sum withheld for costs, nothing appeared to show that that sum was excessive in amount, or was improperly withheld; and that if such had been the case, the remedy of the claimant

or of his mortgagor, who represented his interests before the prize court, was ample before the courts themselves. That the whole case showed no ground of international reclamation on behalf of this claimant.

The commission unanimously disallowed the claim.

The steamships *Sunbeam*, *Eagle*, *Greyhound*, *Lilian*, *Lucy*, *Emma Henry*; also, the steamers *Banshee*, *Tristram Shandy*; *Henry Lafone* and *John T. Lawrence*, No. 389, claimants for the six first named, and *John T. Lawrence*, No. 431, claimant for the two latter.

These vessels were captured at different times in 1862, 1863, and 1864, by war vessels of the United States, and duly condemned in the prize courts of original jurisdiction. No question was made but that they were all at the time of capture engaged in voyages intended for violation of the blockade. No appeals were taken from the prize courts of original jurisdiction before which they were respectively condemned. The claimants filed their reasons for failure to appeal, in which they alleged poverty and destitution of means to defray the expense of appeal, ignorance of the circumstances of the capture, imprisonment of the masters and crews, and previous adverse decisions by the Supreme Court in like cases, as the excuses for non-appeal.

No specific ruling was made by the commission on the sufficiency of these reasons, but the cases were submitted on their merits, the only claim on the part of the claimants being that they were respectively entitled to formal notice and warning by a blockading vessel before they could be subjected to capture. This question was not argued, and the commission unanimously disallowed the claims.

The brig *Geziena Heligonda*; *Walter Easton*, trustee, claimant, No. 390.

This was a Dutch vessel, sailing under charter-party to the firm of *Galbraith, Redgate & Co.*, of Glasgow and Matamoras, for a voyage from Liverpool to Matamoras and back. She was captured on the 4th December, 1864, on the outward voyage, within the blockaded waters of the coast of Texas, and off the port of *Brazos Santiago*, situated some ten to fifteen miles north of the mouth of the *Rio Grande*; was taken into the port of New Orleans and there libelled, and in that court a decree of condemnation was rendered on the 2d February, 1865. The claimant applied for a rehearing in the district court, which was granted, and further proof allowed. *Jansen*, the Dutch master of the brig, was then re-examined in his own language, with the aid of an interpreter; and on the 25th March, 1865, the judgment of condemnation before rendered was annulled, and judgment of restitution awarded, certifying reasonable cause of seizure, and refusing costs and damages to claimant. From this decree both parties appealed, *Captain Jansen* representing the owners of both vessel and cargo. The Supreme Court, on the hearing, and without any written opinion, unanimously affirmed the decree in all respects.

The claim here was brought by Easton as trustee under a trust deed for the benefit of creditors executed by the firm of Galbraith, Redgate & Co., the alleged owners of the cargo. Samuel J. Redgate, one of the members of this firm, and who was also the claimant in case No. 420, hereinbefore reported, and one of the beneficiaries in No. 439, hereafter reported under the head of the Peterhoff, appeared to be a citizen of the United States. The vessel, when first seen, was not only within the blockaded waters of Texas, but was apparently seeking to effect an entrance into the inlet of Brazos Santiago. From the proofs taken in the prize court, however, it was evident that there was no intention to violate the blockade, and that Captain Jansen was seeking to effect this entrance under the mistaken impression that it was the mouth of the Rio Grande. The cargo of the vessel, though containing nothing strictly contraband of war, was in large part fitted and apparently designed for the confederate markets.

On the part of the United States it was contended that the circumstances under which the vessel was captured sufficiently justified the capture as one of "probable cause," and that no ground existed for overruling or questioning the judgment of the United States courts upon the case.

On the part of the claimant it was insisted that a proper and reasonable examination of the books and papers of the vessel, together with the explanation of her position given by her officers, ought to have fully satisfied the captors of her innocent intent, and to have prevented her detention and taking into port for libel.

The commission unanimously disallowed the claim.

The steamship *Adela*; Arthur Bower Forwood and James Dorrington, No. 392, claimants for the vessel; Arthur Bower Forwood and William Bower Forwood, No. 393, claimants for cargo.

This vessel was captured on the 7th July, 1862, near the island of Abaco, one of the Bahama Islands, and a possession of Her Britannic Majesty, in a voyage from Liverpool ostensibly to Nassau. She was taken into the port of Key West, and there libelled in the district court, and a decree of condemnation of both vessel and cargo was there rendered. The claimants appealed to the Supreme Court of the United States, where the judgment of the district court was affirmed. (See report of the case, 6 Wall., 266.)

The *Adela* was a small side-wheel steamer of light draught, fleet, well adapted for service as a blockade-runner and for short trips like those between Nassau and Charleston or Savannah, but unfit for carrying on trade in voyages of the length of that from Liverpool to Nassau. Her cargo on the outward voyage was light, consisting only of twenty cases of Enfield rifles and twenty-five boxes of cartridges, which had been discharged at Bermuda before her capture, and of some

fifty packages of boots and shoes, which were captured and condemned, and which were the subject of the claim in No. 393.

This claim for the cargo, in No. 393, was withdrawn by the claimants by leave of the commission after the completion of the claimants' proofs. In No. 392 proofs were taken before the commission in addition to those taken in the prize court, which were also put before the commission.

The position of the *Adela*, when first summoned by the capturing vessel, as well as when actually captured, was a matter of dispute upon the facts of the case, the witnesses on the part of the claimant giving evidence tending to show that when first summoned, as well as when actually captured, she was within a marine league of the shores of the island of Abaco, while the evidence on the part of the defence tended to show that at both times she was more than that distance from the shore and upon the high seas.

On the part of the claimant it was contended that there was no sufficient proof of the *Adela* being engaged in an unlawful voyage; and also that the capture, being made within British and neutral waters, was unlawful and void, and the owners entitled to make reclamation.

On the part of the United States it was maintained that the preponderance of the evidence was in favor of the lawfulness of the capture as made upon the high seas, and not in the neutral waters of Great Britain.

The counsel for the United States urged that the doctrine of the sovereignty of the proprietary nation over the sea for a marine league from the shore is founded in the idea of a proper and necessary protection to the adjacent coasts, and to the vessels resorting to them for legitimate trade. That in its original inception this doctrine never included the idea that a vessel engaged in an unlawful voyage might protect herself from capture, to which she would be subject on the high seas, by merely skirting the coast of a harborless and substantially uninhabited island, such as the island of Abaco. That although strictly and technically the coast of such an island might be within the protection of the rule, it was only technically so; and that where a claim is set up for the protection of a vessel actually engaged in an unlawful voyage, and claiming a capture otherwise lawful to be made unlawful by reason of being within a marine league of the shore of such an island, a judicial tribunal should require strict and conclusive proof to bring the vessel within the technical rule, and to satisfy them that the neutrality of the proprietary nation had been in fact violated. That the burden of proof, therefore, devolved strictly and onerously upon the claimants; and that on the evidence appearing in this case it would be unjust to resolve any doubts which the commission might have in this regard in favor of the claimants.

The claim was unanimously disallowed.

The bark *Hiawatha*; Miller & Mosman, No. 398, and Ezekiel McLeod, assignee, No. 399, claimants for the vessel; Watkins & Leigh, No. 400; Dalgetty, DuCroz & Co., No. 401; William T. Marshall, No. 402, and the executors of Charles McEwen, No. 452, claimants for cargo.

The *Hiawatha* was captured by the United States blockading fleet, in Hampton Roads, at the mouth of the James River, on the 20th May, 1861, in attempting to pass through the blockading fleet on an outward voyage from Richmond, Va., for Liverpool. She was taken into the port of New York, and vessel and cargo there libelled in the United States district court, and condemned. (See report of the case in that court, Blatchford's Prize Cases, p. 1.) On appeal, first to the circuit court and thence to the Supreme Court, the decree of the district court was affirmed, the opinion of the Supreme Court being delivered by Mr. Justice Grier, and a dissenting opinion being read by Mr. Justice Nelson, in which Chief Justice Taney and Justices Catron and Clifford concurred. (See report in the Supreme Court under title of "*The Prize Cases*," 2 Black, 635 to 699.)

This was one of the first vessels captured during the war, and one of the first upon the validity of whose capture adjudications were had in the prize courts of both original and appellate jurisdiction. In the Supreme Court, where the case was argued in connection with those of several other vessels captured about the same time, and involving to some extent the same general principles, the question of the validity of the blockade established under the President's proclamations of 19th and 27th April, 1861, (12 Stat. at L., 1258, 1259,) and that of the liability of the property of persons domiciled within the insurrectionary States to capture on the high seas as enemy's property, were elaborately argued. The majority of the court sustained the validity of the blockade and the right of capture of property of citizens of the insurrectionary States upon the high seas as enemy's property. The minority of the court held "that no civil war existed between the United States and the States in insurrection till recognized by the act of Congress of 13th July, 1861, (12 Stat. at L., 255;) that the President of the United States does not possess the power under the Constitution to declare war or recognize its existence within the meaning of the law of nations, which carries with it belligerent rights, and thus change the country and all its citizens from a state of peace to a state of war; that this power belongs exclusively to the Congress of the United States, and, consequently, that the President had no power to set on foot a blockade under the law of nations; and that the capture of the vessel and cargo in this case and in all cases before us in which the capture occurred before the 13th July, 1861, for breach of blockade or as enemy's property, are illegal and void, and that the decrees of condemnation should be reversed, and the vessel and cargo restored." (2 Black, 698, 699.)

The case of the *Hiawatha* was this: She sailed from Liverpool on the 11th February, 1861, with a cargo of salt for Richmond, Va., thence

to take cargo back to Liverpool. She passed Hampton Roads, at the mouth of the James River, on the 23d April, and arrived at City Point, the port of Richmond, a few miles below that city on the James River, on the 29th April. She completed the discharge of her outward cargo on the 10th May; immediately commenced lading with her return cargo, (consisting principally of tobacco,) and completed this lading on the 14th or 15th May. On the 16th she weighed anchor and attempted to go to sea without pilot or steam-tug, but was prevented by headwinds. On the 17th a tug attempted to take her out of harbor, but was prevented by the breaking of the tow-line. On the 18th she was taken in tow by another steamer and towed down the river to within about twenty miles of Hampton Roads. From this point she floated down with the tide toward the Roads, and on the 20th was boarded by an officer from a United States blockading vessel, who endorsed upon her register this notice:

This vessel (the *Hiawatha*) has been boarded by the United States blockading squadron, and warned not to enter any port in Virginia or south of it.

S. H. BROWN,

Blockading Officer, United States Steamer Star.

MAY 20, 1861.

On the same day, and while still floating with the tide in Hampton Roads, she was seized by the United States war-steamer *Minnesota*, and thereafter taken into port and libelled, as above recited.

President Lincoln's proclamation establishing blockade of the ports of Virginia was issued 27th April, 1861, (12 Stat. at L., 1259.) Under that proclamation the blockade of the ports of Virginia upon the Chesapeake Bay and the James River was actually established by Commodore Pendergrast, and a proclamation made of same on the 30th April. On the 8th May, Lord Lyons communicated to Mr. Seward a letter from the British consul at Richmond, dated 5th May, in which the consul had said to Lord Lyons:

There are parties here about to load the British ship *Hiawatha* at City Point for Liverpool, under the impression that she will be allowed free egress by the blockading squadron. I have told persons who are here representing the owners of the ship that I see no difficulty to the ship leaving in ballast; but to this they will not consent, as the ship came here expressly from Liverpool at a nominal freight to load a remunerative cargo back.

Lord Lyons stated to Mr. Seward the hardship of the case of the *Hiawatha*, in case she should be compelled to return home in ballast in consequence of the blockade, of which, of course, her owners could have had no knowledge when they sent her out, and submitted the case for the consideration of the Government of the United States, requesting an early answer.

Mr. Seward answered on the 9th May, enclosing a letter from the Secretary of the Navy, in which he said:

Fifteen days have been specified as a limit for neutrals to leave the ports, after actual blockade has commenced, with or without cargo, and there are yet remaining five

or six days for neutrals to leave. With proper diligence on the part of persons interested, I see no reason for exemption to any.

Lord Lyons again wrote Mr. Seward on the 9th May, acknowledging the receipt of Mr. Seward's letter, and saying :

In order to avoid all possible mistake with regard to the Hiawatha, as well as to future cases of the same kind, I venture to request you to inform me whether I am right in concluding, from the statement just quoted, that the date of the shipment of the cargo is immaterial, and that vessels leaving the ports before the expiration of the fifteen days will be allowed to proceed with their cargoes, whether such cargoes were shipped before or after the actual beginning of the effective blockade.

This letter was answered by Mr. Seward on May 11, enclosing another letter from the Secretary of the Navy, as follows :

In answer to Lord Lyons's letter of the 9th instant, I have the honor to inform you that neutral vessels will be allowed fifteen days to leave port after the actual establishment of the blockade, whether such vessels are with or without cargoes.

Lord Lyons responded to Mr. Seward on May 11, thanking him for his prompt information, reciting the correspondence, and saying :

I have, consequently, instructed Her Majesty's consuls to advise masters of British vessels that they are at liberty to take cargo on board as well after as before the commencement of the blockade, and that they will be allowed fifteen days to go to sea, whether with or without cargoes, and whether their cargoes be shipped before or after the actual commencement of the effective blockade.

On the same day Lord Lyons sent to the British consuls at Richmond and other ports a circular, as follows :

Neutral vessels will be allowed fifteen days to leave port after the actual commencement of the blockade, whether such vessels are with or without cargoes, and whether the cargoes were shipped before or after the commencement of the blockade.

He also sent, on the same day, a dispatch to Rear-Admiral Sir A. Milne, of Her Majesty's navy, enclosing, with other documents, copies of the proclamation of the President of April 27, of the notice of blockade by Commodore Pendergrast of April 30, and saying :

The general result of inquiries made by me or other foreign ministers here, as to the manner in which the blockade will be conducted, appears to be—

1. That the date of the commencement of the blockade in each locality will be fixed by the issue of a notice by the commanding officer of the squadron appointed to blockade it. It does not, however, appear to be intended that such notice shall be officially communicated to the governments of neutral nations, or to their representatives in this country.
2. That fifteen days from the beginning of the effective blockade will be allowed, in every case, for neutral vessels already in port to put to sea.
3. That, until the fifteen days have expired, neutral vessels will be allowed to come out with or without cargoes, and whether their cargoes were shipped before or after the actual commencement of the blockade.
4. That, except in the last-mentioned particular, the ordinary rules of blockade will be strictly enforced.
5. The armed vessels of the neutral states will have the right to enter and depart from the blockaded ports.

I continue to be of opinion that, provided the blockade be effective and be carried on in conformity with the law of nations, we have no other course, in the absence of positive instructions from Her Majesty's government, than to recognize it.

In the decision of the cause in the district court, Judge Betts expressed the opinion that the correspondence between Mr. Seward and Lord Lyons did not constitute any relaxation of the general rule limiting the right of departure of neutral vessels from a blockaded port to such cargo as had been laden before receiving notice of the blockade; so that, if the *Hiawatha* had departed within the fifteen days allowed for departure after the establishment of the blockade, she would not have been entitled to take out the cargo laden after knowledge of the blockade, (*Blatchford's Prize Cases*, p. 20.) The Supreme Court, however, distinctly overruled Judge Betts upon this point, saying:

After a careful examination of the correspondence of the State and Navy Departments, found in the record, we are not satisfied that the British minister erred in the construction he put upon it, which was that a license was given to all vessels in the blockaded ports to depart with their cargoes within fifteen days after the blockade was established, whether the cargoes were taken on board before or after the notice of the blockade. All reasonable doubts should be resolved in favor of the claimants. Any other course would be inconsistent with the right administration of the law and the character of a just government.

The British consul at Richmond gave to the master of the *Hiawatha*, on the 15th May, a certificate stating that, according to the best information attainable by him, the effective blockade at the mouth of the James River began on the 2d May. After the capture of the vessel, correspondence ensued between Lord Lyons and Mr. Seward, in which Lord Lyons earnestly recommended the case of the *Hiawatha* to the favorable consideration of the United States Government, saying that it appeared "that the master of this vessel was innocent of any intention to break the blockade, and that his not having passed the blockading squadron earlier was due to erroneous information or unavoidable detentions." He also called attention to the cases of the *Haxall* and the *Octavia*, and expressed the hope that the Government of the United States would be disposed to extend to the *Hiawatha* the same favor which had been shown to those vessels.

In another letter to Mr. Seward, Lord Lyons said:

I do not, of course, consider myself competent to make any comments upon the decision of Judge Betts on questions of law; nor do I ground my present application upon legal considerations at all. My desire is, in conformity with the learned judge's own suggestion, to obtain relief for the owners of the *Hiawatha* by an appeal to the equity and indulgence of the Government of the United States.

And again:

That, by giving relief to the memorialists, the United States Government would evince a spirit of comity and generosity which would be highly appreciated by the government of Her Majesty.

In the cases of the *Tropic Wind*, the *Haxall* and the *Octavia*, those were vessels captured about the same time with the *Hiawatha*, and under similar circumstances had been released by order of the Government, on the application of parties interested or their respective governments, the *Tropic Wind* after judgment of condemnation, and the *Haxall* and *Octavia* before judgment.

In cases No. 400 and 401, the memorials failed to show the respective claimants the owners of the portions of the cargo claimed by them, but showed those portions respectively to be the property of one David Dunlop, a resident of Petersburg, Va., who was shipping them to the claimants in performance of executory contracts between him and the respective claimants for that purpose.

In the case of Wm. T. Marshall, No. 402, the memorial showed that the claimant was, at the time of the capture, domiciled in Richmond, Va.

Demurrers were interposed in those cases, specifying these respective grounds.

In the case of McEwen's executors, No. 452, the proofs showed the testator domiciled at Richmond down to about the time of the capture; but about that time, the proofs failing to show whether shortly before or shortly after, he returned to the domicile of his nativity in Great Britain, where he ever after remained until his death.

On the part of the claimants it was contended that, irrespective of the strict rule of prize law applicable to the case of the *Hiawatha*, the case was one where in "justice and equity" the claimants were entitled to indemnity, being without intentional fault, and morally, at least, innocent of any intention to violate the blockade, or do any illegal or prohibited act; that the master of the vessel had used the utmost diligence in lading his vessel within the time which he was informed he was entitled to consume in lading it, and had been prevented from reaching Hampton Roads within the time limited, by causes beyond his control; that he ought not to be made to suffer for the accidents that had deprived him of the services of a pilot and the aid of steam, nor for the winds that retarded the progress of his ship to sea, nor by reason of the master's failure, in the emergency of an unexpected war, to understand the exact legal significance of proclamations of the President, and the legal consequences of blockade; that at the time of the capture no war existed between the United States and the Confederate States, by virtue of which the blockade of the confederate ports could be lawfully established; that no such war could be taken as existing until recognized by the act of Congress of 13th July, 1861; that consequently the President had no power to set on foot a blockade of the ports in question under the law of nations prior to the 13th July, 1861; that the capture of the *Hiawatha* and her cargo, whether for breach of blockade or as enemy's property, was illegal and void; and that by the terms of the President's proclamation the vessel was entitled to a warning indorsed on her papers by an officer of the blockading force, and was not liable to capture, except for an attempt to leave port after such warning.

As part of his argument, the counsel for the claimant cited and adopted the dissenting opinion of Mr. Justice Nelson in "*The prize cases*," (2 Black, 682.) He cited also the case of the *Neptunus*, (3 Rob., 110, 173; and *Medeiros vs. Hill*, 8 Bing., 231.)

On the part of the United States it was contended that, as a matter of fact, war actually existed between the United States and the Confederate States at and from the dates of the respective proclamations of blockade by the President on the 19th and 27th April, 1861, Virginia having seceded by ordinance of her convention on the 20th April, and having actually and formally joined the Confederate States on the 27th April. That, war thus existing, the establishment of a blockade was within the constitutional powers of the President as the chief executive officer of the United States and commander-in-chief of the Army and Navy. That certainly as to foreign nations his acts were to be regarded fully and completely as the acts of the United States, and the establishment of a blockade by him was its establishment by the nation. That the validity of the blockade so established by him was unquestioned by the Congress which met after the issuing of the proclamation, and while it was in the course of enforcement; and that it was expressly legalized by the statute of 6th August, 1861, which legalized and made valid the President's acts, proclamations, and orders, after the 4th March, 1861, "respecting the Army and Navy of the United States * * with the same effect as if they had been issued and done under the previous express authority and direction of the Congress of the United States." (12 Stat. at L., 326.) That the validity of this blockade had been fully recognized by the British government as well as all other foreign powers as effectual and valid; citing the correspondence of Lord Lyons, above recited, and Prof. Bernard's "Neutrality," &c., p. 231 *n*. That the proclamation of the President did not modify or assume to modify the law of blockade as held by the rules of international law; and that it was only in case of a vessel innocently approaching the blockaded port without notice, that she was entitled to be duly warned off before becoming a subject of capture; citing on this point the *Columbia*, 1 Rob. 156; the *Vrow Judith*, *id.*, 152; the *Betsey*, *id.*, 332; the *Adelaide*, 2 *id.*, 111; the *Calypso*, *id.*, 298; the *Tutela*, 6 *id.*, 181; 3 Phillimore, 394; Prof. Bernard's *Neutrality*, p. 236. That the misapprehension of legal rights by the master of the *Hiawatha* could not be taken into account as excusing his action in attempting to pass out through the blockade after the expiration of the time allowed him by the rules of international law, and by the specific notice contained in the diplomatic correspondence above recited for that purpose. And that the accidents by which the claimants attempted to excuse the failure of the *Hiawatha* to leave within the permitted time could not be held to make her departure lawful, or exempt her from capture.

As to the argument of the claimant's counsel in favor of the rights of the claimant before this commission, under general principles of justice and equity outside of and beyond the principles of international law as held by the prize courts, the counsel for the United States held the same general line of argument as above reported under the case of the *Sir William Peel*, No. 243; and insisted that the fact of the Government

of the United States having remitted its lawful claims for its own reasons in the cases of the *Tropic Wind*, the *Octavia*, and the *Haxall*, certainly could not be taken as any reason for enforcing as matter of right the same generosity in the case of the *Hiawatha*.

The commission unanimously disallowed the claims of Watkins & Leigh, No. 400, and of Dalgetty, Du Croz & Co., No. 401, on the ground that the ownership of the portions of the cargo claimed by them respectively did not appear to be in them but in a citizen of the United States. They also unanimously disallowed the claim of Wm. T. Marshall, No. 402, it appearing that he was permanently domiciled in the city of Richmond within the enemy's country.

It made awards in favor of the claimants for the vessel in Nos. 398 and 399, amounting to \$25,369; and an award in favor of the executors of McEwen, No. 452, in respect of McEwen's portion of the cargo, for \$6,090; Mr. Commissioner Frazer dissenting from these three awards.

The steamer *Peterhoff*; Spence & Fleming, No. 405, claimants for the vessel; James Wetherell, No. 406; William Almond, No. 407; Alfred Wilson and others, No. 408; the same, No. 409; Joseph Spence, No. 410; Alfred Lafone, No. 411; Charles S. Osborne and others, No. 412; Anna Louch, No. 413; Frederick D. Frost and others, No. 414; Thomas P. Austin, No. 415; James Holgate, No. 416; Jarman & Smith, No. 417; Welch, Margetson & Co., No. 422; Wilson & Armstrong, No. 423; Grant, Brodie & Co., No. 424; Hine, Mundella & Co., No. 425; Ernest Ellsworth, No. 426; John Ellsworth, No. 438; Walter Easton, trustee, No. 439; Robert Sinclair, No. 440; Thomas Edgley & Co., No. 441; claimants for cargo.

This vessel was captured on the 25th February, 1863, in the Atlantic Ocean, off the Island of St. Thomas, taken into the port of New York, and there libelled as prize in the United States district court. A decree of condemnation passed in that court against both vessel and cargo. (See *Blatchford's Prize Cases*, 381, 463, to 550.) An appeal was taken to the Supreme Court, which court reversed the decree of condemnation by the district court, except as to a small portion of the cargo, found by that court to be contraband of war, and intended for the ultimate use of the enemies of the United States, and belonging to the claimants in cases Nos. 408, 409, and 411, and except also so much of the remaining cargo of the *Peterhoff* as belonged to the owners of the contraband goods thus condemned. The cause was thereupon remanded to the district court by the Supreme Court, with directions to enter a decree in conformity to the opinion of the Supreme Court. Pending the proceedings in the prize courts, the vessel was taken by the authorities of the United States, for the use of the government, under the statute for that purpose above referred to under the case of the *Granite City*, No. 377. The cargo was also sold by order of the district court, pending the proceedings. On the remanding of the cause to the district court, proofs

were there taken as to the portions of the cargo condemned as contraband and its value, and as to other portions of the cargo and their value belonging to the owners of the contraband cargo, as to the costs of the captors chargeable against the vessel, and as to the claimant's costs chargeable against the ship, and the condemned and uncondemned cargo, and these costs were duly apportioned accordingly. The amount of the appraised value at which the ship had been taken, less the costs charged against her, was paid over to her owners. The proceeds of the uncondemned cargo were also paid over to their respective owners, less the proportion of claimant's costs against same, which costs were paid to the proctors of the respective claimants, to whom they were, by the final decree, allowed. No complaint appeared to have been made in the district court as to the allowance or apportionment of the costs and charges, or in respect of the appraised value at which the United States had taken the vessel; and no question in respect of either of these matters was taken to the Supreme Court on appeal. By stipulation of the counsel for the respective parties, all the papers relating to the appraisal and taking of the vessel by the United States were omitted from the apostles sent up to the Supreme Court on appeal.

The claimants in No. 405 claimed about £21,000, besides interest, for the alleged value of the vessel, over and above the appraised value at which she was taken by the United States; and for freight and passage money which they would have been entitled to receive, and costs and expenses sustained by them.

The claimants in Nos. 408, 409, and 411 claimed about £6,000, besides interest, the alleged value of their portions of the cargo condemned, including prospective profits upon the sale of the same at Matamoras, and their costs and expenses.

The claimants in the remaining cases claimed about £40,000, besides interest, for the alleged value of their portions of the cargo, including prospective profits on its sale at Matamoras, and their costs and expenses respectively, less the respective amounts received by them from the proceeds of the cargo.

The proofs showed that the *Peterhoff* sailed from London for the mouth of the Rio Grande in January, 1863, the bills of lading of her cargo specifying the same as destined for Matamoras, and to be taken from alongside the ship at the mouth of the Rio Grande. Included in the cargo were some thirty-two cases of artillery harness, a large quantity of boots, described in the invoices as "artillery boots," "men's army bluchers," &c.; and eighty bales of blankets described in the invoice as "government regulation gray blankets." Besides these portions, which were held by the Supreme Court as belonging to the class of articles "manufactured and primarily and ordinarily used for military purposes in time of war," and so contraband when destined to the use of a belligerent; the cargo included large quantities of iron, steel, nails, leather, and drugs, including 1,000 pounds of calomel, large amounts of morphine, 265

pounds of chloroform, and 2,640 ounces of quinine, all goods in special demand for the use of the confederacy. Much of the cargo was deliverable to order. A package deposited with the captain by Mohl, one of the Texan passengers, and which the captain testified he was told by Mohl contained "white powder," but which the mate testified appeared to be a package of "dispatches," was thrown overboard by order of the captain on the boarding of the vessel by the captors. Other papers were at the same time burned by the fireman by order of the captain. The firm of James I. Bennett & Wake, London, were the agents of the Peterhoff, and the cargo was mainly secured through them. A circular of this firm was proved, dated 24th November, 1862, in which they notified their "friends desirous of shipping to America" that they would dispatch a vessel to the Rio Grande about 1st December; that the services of Mr. Redgate, Lloyd's agent, an expert in cotton, and who had been a resident nearly forty years in Texas and Mexico, had been secured, whose services would "be of great value to shippers in respect to his local knowledge and influence, as also as regards agency of the inland transit and landing and shipping of goods and cotton." And further, that "a Mr. Besbie, of the Confederate States of America, holds a contract with that Government, whereby he is to receive 100 per cent. on invoice cost, payable in cotton * * * for any goods he may deliver into the Confederate States," the benefits of which contract he would share to the extent of 50 per cent. with any houses that might feel inclined to ship. The Mr. Redgate named in this circular was a passenger on the Peterhoff at the time of her capture, and was a claimant for part of the cargo and for damages by occasion of his capture and detention before the commission. The Mr. Besbie, or Begbie, also named in the circular, joined the ship at Plymouth, but suddenly left it at Falmouth. His name was not mentioned by the master in his deposition *in preparatorio*, who alluded to him merely as "another passenger" who "left at Falmouth." Neither of the firm of Bennett & Wake was examined as a witness by the claimants before the commission, though notice was given of the examination of Bennett, and proof was made that he was within reach in London at the time of the taking of the testimony for the claimants there, and the counsel appearing for the United States on the examination demanded his production as a witness for the claimants pursuant to the notice. Bennett & Wake had contracted on the 27th October, 1862, with Pile, Spence & Co., the owners of the Peterhoff, for the laying on of a first-class screw-steamer to proceed to the Rio Grande on freight; under which contract the Peterhoff was dispatched, as named in the circular of Bennett & Wake of 24th November, 1862, above referred to.

The counsel for the United States referred to and adopted the opinion of the Supreme Court, (5 Wall., 28,) as part of his argument. He maintained that the proofs before the prize court, especially strengthened as they were by the proofs taken before the commission, fully sustained the

condemnation of the portion of the cargo condemned by the Supreme Court as contraband, and in fact sufficiently showed the pretended destination of the vessel and cargo to Matamoras to be colorable. That if all the proofs now appearing before the commission had been before the prize court, they would have fully justified the condemnation of the vessel and the entire cargo. That in any event, the capture of the vessel and taking her into port was justified by the presence of the contraband on board, which was in fact liable to condemnation as well as by the circumstances of the case, fully establishing probable cause. That the evasions and falsehood of the master, Jarmin, on his examination *in preparatorio*, and the spoliation of papers shown, of themselves debarred the claimants from any award for costs or damages. That as to the taking of the vessel by the United States at an appraisement below her alleged actual value, and as to the alleged errors of the district court in the apportionment of claimants' costs upon that part of the cargo not condemned in captor's costs, those were matters as to which no question was raised in the prize-courts, and for which those courts afforded an ample remedy if any injustice was done in respect of them to the claimants, or any of them, and that the claimants could not be heard here for the first time to question the legality of the proceedings in those respects. That as to the apportionment of the claimants' costs, this appeared to have been done not only without objection of the claimants in the prize court, but on the application of their own proctors and counsel. And as to the appraisement and taking by the United States, everything in relation to these matters had been by stipulation withdrawn from the consideration of the Supreme Court, thus clearly implying the consent of the owners to the taking at the valuation named.

On the part of the claimants, it was contended that the portions of the cargo condemned by the decree of the Supreme Court as contraband were not in fact contraband, not primarily designed for military use, and not shown to be destined for the use of the enemies of the United States. That the voyage of the vessel was lawful from one neutral port to another, and that her capture was wholly unjustified by any proof of intent to violate the blockade, or of unlawful conduct in any respect. That the valuation at which the vessel was taken by the United States Government was much less than her actual value, and that the United States were justly chargeable with at least the sum of \$30,000, on account of this difference in value. That the apportionment of claimants' costs upon those portions of the cargo not condemned in costs was unlawful. That the question of costs had already been settled by the decree of the Supreme Court; and that the district court in charging these claimants' costs upon those parts of the cargo exempted from costs by the decree of the Supreme Court, disregarded and violated that decree.

The commission unanimously disallowed all the claims.

The steamship Georgia; Edward Bates, M. P., claimant, No. 429.

The memorial of the claimant in this case recited that the Georgia

was an armed vessel of the Confederate States. That she came into the port of Liverpool on or about the 2d May, 1864; was there disarmed and advertised for sale; and that the claimant, on the 2d June, 1864, purchased her without any armament, and paid for her in good faith the sum of £15,000 sterling, her full value at the time of the purchase. That he immediately changed her internal arrangements to fit her for use as a merchant steamer, and on the 18th July, 1864, chartered her to the Portuguese government for a voyage to Lisbon, Portugal, having spent a large sum of money in the alterations and fittings to adapt her for carrying passengers and cargo pursuant to the terms of the charter-party. That under the charter-party the vessel was laden by the Portuguese government with coals for the use of the vessel, and duly cleared at Liverpool on her voyage to Lisbon. That while pursuing that voyage, "in a peaceable manner and in violation of no law whatsoever," she was unlawfully captured on the high seas by the United States ship of war Niagara; was taken into the port of Boston, there libelled in the United States district court, and condemned as lawful prize. That an appeal was taken from the decree of the district court to the Supreme Court of the United States, which on the hearing affirmed the decree of condemnation. The claimant claimed an award for £27,654, besides interest.

To this memorial the United States demurred as setting forth no valid claim against the United States; in that the memorial showed the vessel to have been an armed vessel of war of the so-called Confederate States of America, which were, during the whole period of the transactions set forth in the memorial, at war with the United States. That she entered the neutral port of Liverpool in her character as such armed vessel of war, and was there purchased by the claimant, her armament having been first removed, with full knowledge of her former character as such vessel of war, belonging to a power at war with the United States. That such purchase carried no title to the claimant as against the United States, or as against their right to capture the vessel as a vessel of war; and that her subsequent capture by the United States, as set forth in the memorial, was a lawful and valid capture, and the vessel was properly and lawfully condemned by the prize courts.

The counsel for the United States submitted the case on demurrer on the opinion of the Supreme Court, delivered on the affirmance of the decree of condemnation (7 Wall., 32) and without further argument.

Her Britannic Majesty's counsel filed an argument in behalf of the claimant, in which he contended that the doctrine held by the Supreme Court, as establishing liability of the vessel to capture after her disarmament and sale, was unsound and unsustained by the authorities cited in the opinion. He cited and discussed the authorities cited by the Supreme Court in its opinion, to wit: *The Minerva*, 6 Rob., 397; *the Baltic*, 11 Moore's P. C. R., 145; Story's notes on the Principles and Practice of Prize courts, 63; Wildman, vol. 2, p. 90; and contended that these au-

thorities did not sustain the conclusions of the Supreme Court on which the decree of affirmance was based.

The claim was unanimously disallowed.

The steamship *Circassian*; Henry James Barker, mortgagee, No. 432, claimant for vessel; Overend, Gurney & Co., mortgagees, claimants for freight; The Royal Exchange Assurance Corporation and others, No. 444, claimants for cargo.

The *Circassian* was owned by Zachariah C. Pearson, of Hull, who had given mortgages to the amount of £25,000 upon the vessel, which mortgages were held by the claimant Barker, No. 432. He had also assigned her outward freight to Messrs. Overend, Gurney & Co., No. 433, by way of security for indebtedness. The vessel sailed from Bordeaux, France, on the 7th April, 1862, under the charter-party hereinafter recited. She was captured by a United States cruiser on the 4th May, 1862, on the high seas off the coast of Cuba, taken into the port of Key West, and there libelled and condemned as prize. An appeal was taken to the Supreme Court, which court affirmed the decree of condemnation, Mr. Justice Nelson dissenting. The case is reported, with the dissenting opinion of Mr. Justice Nelson, in 2 Wallace, 135 to 160.

The vessel was chartered by the owners 11th February, 1862, to "J. Soubry, agent to the merchants of Paris," being then on her way from London to Cardiff, to proceed thence with all convenient speed to Havre or Bordeaux, there to load; "and being so loaded, shall therewith proceed to Havana, Nassau, or Bermuda, as ordered on sailing, and thence to proceed to a port of America, and to run the blockade, if so ordered by freighters," the owners agreeing "not to cover more than half her value, say £20,000, by insurance against war risk." The rate of freight agreed upon was \$40 per ton, with 10 per cent. primage. The vessel was loaded at Bordeaux, shipping receipts being given by the master in the following tenor, (after specifying the merchandise shipped :) "Which said merchandise I promise to convey in my said steamer (the dangers of the seas, machinery, and all other unavoidable accidents excepted) to the said port of Havana, there to receive orders for the final destination of my said steamer, and there to deliver the same to Messrs. Brulatour & Co., or their order, (or to order generally,) he or they paying me freight in accordance with the terms of my charter-party, which is to be considered the supreme law as regards the voyage of said steamer, the orders to be received for her and her final destination." A "memorandum of affreightment," given to Mr. Bouvet, one of the shippers, was found among the papers of the vessel, the translation of which is as follows:

Memorandum of affreightment.

Taken on freight of Mr. Bouvet, jeune, by order and for account of Mr. J. Soubry on board of the British steamer *Circassian*, Captain Hunter, bound to Nassau, Bermuda, or Havana, the quantity of fifty or sixty-five tons, heavy or light, at the rate of \$40 per ton for the heavy and the light, besides 10 per cent. average and primage.

The merchandise must be put on board, including all delay, the day after notice, given by the broker having in charge the loading, under the penalty of all damages and the loss of the place on board, without recourse to judicial measures to prove the suit for non-execution of the present engagement.

Mr. J. Soubry engages to execute the charter-party of affreightment, that is to say, that the merchandise shall not be disembarked but at the port of New Orleans, and to this effect he engages to force the blockade, for account and with authority of J. Soubry.

LAIBERT, *Neveu*.

BORDEAUX, the 15th February, 1862.

Sent a similar memorandum to the parties concerned.

P. DESBORDES.

Other papers were destroyed by the master of the Circassian after she had been stopped, and before she was boarded by the captors. The vessel was captured, as above stated, on the 4th May, 1862. Five days previous to the capture—on the 29th April, 1862—the city of New Orleans was captured by the Navy and Army of the United States, under Admiral Farragut and General Butler, and thenceforward continued in the possession of the United States to the termination of the war. A proclamation was issued by General Butler, dated 1st May, printed by some Federal soldiers in a printing-office seized for that purpose, on the 2d May, and first generally published in the newspapers of the city on the 6th May; which proclamation declared, among other things, that “the city of New Orleans and its environs, with all its interior and exterior defences, having been surrendered to the combined naval and land forces of the United States; and having been evacuated by the rebel forces, in whose occupation they lately were; and being now in occupation of the forces of the United States, who have come to restore order, maintain public tranquility, and enforce peace and quiet under the laws and Constitution of the United States, the major-general hereby makes known and proclaims the objects and purpose of the Government of the United States in thus taking possession of the city of New Orleans and the State of Louisiana. * * * * All rights of property of whatever kind will be held inviolate, subject only to the laws of the United States,” &c. This proclamation also declared the city under martial law.

In the case of the *Venice*, (2 Wall., 276,) the Supreme Court of the United States held that the military occupation of the city was to be considered as substantially complete from the date of this publication in the newspapers, (6th May.)

On the 12th May, President Lincoln issued a proclamation reciting the blockade, up to that time, of the port of New Orleans, with two other ports, and that the blockade of those ports “may now be safely relaxed with advantage to the interests of commerce,” and declaring that the blockade of those ports “shall so far cease and determine from and after the 1st day of June next; that commercial intercourse with those ports, except as to persons, things, and information contraband

of war, may from that time be carried on, subject to the laws of the United States," &c. (12 Stat. at L., 1263, 1264.)

Barker, as mortgagee of the vessel, (No. 432,) claimed £23,200, besides interest. Overend, Gurney & Co., assignees of the outward freight, (No. 433,) claimed £10,000, besides interest. The insurance companies and underwriters (No. 444) claimed £52,636, besides interest, the value of the cargo insured by them, abandoned by the owners, and paid for as for a total loss. Of the cargo thus insured, portions to the value of £11,503 were alleged to have been owned by British subjects and insured by the claimants, British underwriters. The remainder of the cargo, valued at £41,133, was admitted to have been owned by French merchants residing at Bordeaux, though insured by British underwriters. On the sale under the decree of condemnation the gross proceeds of the vessel were \$107,000, United States currency; the gross proceeds of the cargo were \$243,479.49 in the same currency.

On the part of the claimants it was maintained—

1. That the immediate destination of the Circassian at the time of her capture was Havana, a neutral port; that this destination was a real one; and that the question whether her voyage was to extend beyond Havana was an open question, not to be decided until her arrival there; so that her capture before reaching Havana could not be considered a capture in the course of a voyage to a blockaded port; that until her arrival at Havana and departure thence for a blockaded port, a *locus penitentiae* existed, even if the original design had been that she should proceed from Havana to New Orleans.

2. That notwithstanding the doctrines held by the prize courts of England and the United States, the more approved modern authorities overrule the doctrine of the *droit de prevention* and *droit de suite*; "that is to say, the right of considering as guilty of a violation of the blockade every neutral vessel which has sailed for a place declared blockaded after knowledge of the notification; and of regarding in *flagranti delicto*, during the whole return voyage to its port of destination, every vessel which has left a blockaded port;" and hold as the better doctrine that "the guilty vessel can only be seized, first, at the moment of violating the blockade by crossing the part of the sea which has been conquered by the blockading squadron; second, in the road or blockaded port, if the investing force can enter there, either by taking the port or by penetrating there by force or stratagem and carrying off the vessel; and third, at the moment of attempting to go out, that is to say, when crossing the territory of a nation whose law it has violated, even although the departure in itself should be innocent." That under this doctrine the capture of the Circassian was unlawful on the high seas, even if her direct destination was a blockaded port.

3. That by the terms of the President's proclamation of blockade, as well as by the rules of international law, the Circassian could not be law-

fully captured until she had received due notice of the blockade by warning entered upon her register.

4. That by the capture of New Orleans and the reduction of that city to the possession and control of the United States before the capture of the *Circassian*, the blockade of that port had ceased ; that the right of blockade being a purely belligerent right, and in respect of an enemy's port, of necessity terminates *eo instanti* on the capture of the blockaded port itself by the blockading belligerent ; that in the case of New Orleans, not only was the fact of its capture in the month of April, and its permanent and complete occupancy and control by the United States from that time forward fully attested as a matter of history, but such possession and occupation was officially asserted and proclaimed by the proclamation of General Butler on the 1st May, 1862 ; that this proclamation speaks from its date, and not from the time of its alleged general publication in the newspapers, erroneously assumed by the Supreme Court to have been on the 6th May, it in fact having been published in the *New Orleans Daily Picayune* on the 4th May, 1862, as appeared by a copy of that paper produced before the commission ; that the right to close or control the captured port by municipal regulation under the statute of 13th July, 1861, (12 Stat. at L., 256, 257,) was not only entirely distinct from, but inconsistent with the belligerent right of blockade, and that the former right accrued when the latter terminated, upon the capture and complete possession of the city ; and that, under the municipal regulations instituted, or to be instituted, in such case, plainly no capture could be made on the high seas, those municipal regulations not operating extra-territorially ; that the blockade having thus terminated by the capture of New Orleans, the right of capture of the *Circassian*, if it had existed until then, necessarily terminated with the termination of the blockade, the vessel no longer being *in delicto*. That in regard to the claims of the insurance companies and underwriters in No. 444, those claims were the legitimate subject of reclamation before this commission, as well in respect of those portions of the insured cargo originally owned by French merchants as of those owned by British subjects ; that upon abandonment and payment the title of the underwriters became absolute to all interest of the insured in the property, and to all right of reclamation in respect of the same, and that such title related back to the date of the insurance.

The counsel for the claimants presented manuscript opinions of doctors Phillimore and Lushington, and other counsel, holding the capture of the *Circassian* illegal on account of the lack of previous warning, as well as upon the ground of the previous capture and occupation of New Orleans. They also presented the dissenting opinion of Mr. Justice Nelson, in the case of the *Circassian*, (2 Wall., 155,) as a correct exposition of the law applicable to the case, and cited the following authorities : The *Prize Cases* (2 Black, 635) ; the *Amy Warwick* (2 Sprague, 123) the *Venice* (2 Wall., 259) ; *Thirty Hogsheads of Sugar vs. Pyle* (9 Cranch,

191); *The United States vs. Rice* (4 Wheat., 246); *Fleming vs. Page* (9 How., 603); *Cross vs. Harrison* (16 How., 164); *The Abby* (5 Rob., 253); *The Trende Soztre* (6 Rob., 390 *n*); *The Francisca* (10 Moore's P. C. R., 37); *Palli, Principes de droit pub. mer.*, 180; *Dana's Wheat.*, 687 *n*; *The Lizette* (6 Rob., 395); *The Empress* (Blatch. P. C., 659); *Dean's Law of Blockade* 2, 32; *Lawrence's Wheaton*, pp. 30, 100, 459, 510, 777 to 779, 810, 845, 848 to 850, 970; *Wheaton's Life of Pinckney*, 199 to 228; *The Dickinson* (1 H. and M., 31); *La Jeune Eugenie*, (2 Mason, 409, 463); *The Louis* (2 Dods., 110); *The Antelope* (10 Wheat., 122); *The Mary Anna Flora* (11 Wheat., 442); *Lawrence's Visitation and Search*, 73, 79; *Hudson vs. Guestier* (6 Cranch, 281); *Race vs. Himely* (4 Cranch, 272); 2 Phill., 237; *American State Papers*, vol. 4, pp. 156, 158; *The Arthur* (1 Dods., 425); *Hautefeuille*, vol. 2, pp. 239, 244; *Vos vs. United States Insurance Company* (1 Caines's Cases in Error, XXIV); *Vandenhuevel vs. Same* (2 *id.*, 217); *Liotard vs. Graves* (3 Caines's Rep's, 239); *Fitzsimmons vs. The Newport Insurance Company* (4 Cranch, 185); *Hill vs. United States* (C. Cls. R.); *The Maria* (5 Rcb., 365); *The Maryland Insurance Company vs. Wood* (6 Cranch, 29); *The Admiral*, (3 Wall., 614); *Attorney-General's Opinions*, vol. 1, p. 505; *The Frederick Molke* (1 Rob., 87); *The Rolla* (6 *id.*, 372); *The Success* (1 Dods., 134); *La Peyre vs. United States*, in U. S. Sup. Ct., MS. opin., not yet reported; *Byunkershoek de rebus bellicis*, c. XVI; *The Grey-Jacket* (5 Wall., 342); S. C., on motion (*id.*, 370); *Tudor's Leading Cases on Mercantile and Maritime Law*, 887; *Texas vs. White* (7 Wall., 789); *Comegys vs. Vasse* (1 Peters, 210); *Shepherd vs. Taylor* (5 *id.*, 712); *Trevol vs. Bache* (14 *id.*, 95); *Gill vs. Oliver's Executors* (11 How., 529); *Jandon vs. Corcoran* (17 *id.*, 612); *Gracie vs. New York Insurance Company* (8 Johnson's R., 237); *Watson vs. Insurance Company of North America* (1 Binney, 47); *Carlisle vs. United States*, in Sup. Ct., not yet reported.

On the part of the United States it was contended that the voyage of the Circassian was plainly undertaken with the purpose and intent of violating the blockade; that she was under express contract with her freighters to violate it, and was in the actual prosecution of the voyage with that purpose and destination when captured, and was thereby liable to capture and condemnation. (*The Columbia*, 1 Rob., 156.) That having full knowledge of the existence of the blockade, and having expressly undertaken its violation, no further notice or warning was necessary to justify her capture.

That New Orleans, which had been fully and completely an enemy's city, and one of the enemy's chief marts from the outbreak of the rebellion in 1861 to its occupation by the Army and Navy of the United States on the 29th April, 1862—five days before the capture of the Circassian—had not been reduced to the fixed, stable, and assured possession of the United States at the time of that capture. That the mere *possessio pedis* of the city by the United States did not work the instant termination

of the blockade, but that reasonable time after the actual possession must be allowed to determine whether the occupation was such a stable and permanent one as to justify the opening of the port as a port of the United States. That until such occupation was so established, New Orleans still remained an enemy's city as regarded the rights of neutrals to trade there.

That time must be given after the actual occupation, reasonably sufficient to put in force the municipal regulations of the United States, with the apparatus of custom-houses and courts, through which such municipal regulations were to be enforced; and that until sufficient time had elapsed for that purpose, the belligerent right of blockade continued; that the blockade of New Orleans was not a blockade "by the simple fact only," but "by a notification accompanied with the fact;" and such blockade continued within reasonable limitation till ended by like public notification. (*The Neptune*, 1 Rob., 170.)

That the time fixed by the Supreme Court in the case of the *Venice* (2 Wall., 259) as the date of the assured possession by the United States, as determining the national character of the inhabitants of that city, (6th May, 1862,) was certainly the earliest date which could properly be assigned as that of assured possession by the United States for any purpose.

That, in fact, the time necessary to establish the permanence and stability of possession, by the capturing belligerent, should fairly and properly be left, within reasonable limits, to his own determination, and that the date of 1st June, 1862, fixed by the President of the United States, by his proclamation of 12th May, (12 Stat. at L., 1263, 1264,) for the termination of the blockade, was within reasonable limits under the rules of international law; and that that date (1st June) should be considered the lawful and proper termination of the blockade.

That, at the date of the capture of the Circassian, the city of New Orleans, though in the actual occupancy of the United States forces, had neither capitulated nor surrendered, but was still an enemy's city, deserted for the time by its garrison, but held only by an insignificant force, and what its chief civic officer, still avowing the adherence of the city to the confederate cause, called "the power of brutal force, not by choice or consent of its inhabitants." (See letter of the mayor of New Orleans to Flag-officer Farragut, 4 Reb. Rec., doc. 523, 524; also, 2d Wallace, 141 n; and Parton's *Butler in New Orleans*, 282, 342.) That the military occupation of the city of New Orleans by the United States could not be extended by construction beyond the lines of actual military occupation, and that the city of New Orleans was not continuous with the port of New Orleans as established by the statutes of the United States, (9 Stat. at L. 458;) but that the port which had been blockaded embraced territory outside the city, and not within the lines of actual military occupation. That such occupation of a portion only

of the port could not be deemed, of itself, a termination of the blockade of the port.

That the collection district of which New Orleans was the sole port of entry, included the entire extent of the navigation of the Mississippi River and its tributaries, covering thousands of miles of navigation, and large cities situated upon that river and its tributaries, (2 Stat. at L., 252; 4 *id.*, 480.) That a large extent of the country included within this district, and many important ports and towns within it, were still in the undisturbed control and occupancy of the enemy. That the blockade of New Orleans was in effect the blockade of the Mississippi River, and that until the United States were in complete and assured possession of all the mouths of the river as well as the entire port of New Orleans, the imperfect and perhaps transient occupation of the city of New Orleans was not to be taken as terminating the blockade.

That so far as the Circassian herself and her officers were concerned, sailing with the direct purpose and destination of violating the blockade, and without knowledge or notice either to them or their captors of any change of occupation of New Orleans, such an accidental, technical, and artificial objection to the rightfulness of her capture should not be allowed to change the character of a capture otherwise lawful, and convert it into an unlawful capture, without strict and conclusive proof of the facts relied on so to change the character of the capture.

That, as to the claim of the insurance companies, (No. 444,) they had no standing before the commission in respect of the larger part of the cargo insured by them, the same having been the property of French merchants, not subjects of Her Britannic Majesty. That, by the terms of the treaty, jurisdiction is given to the commission only of claims "growing out of injuries to the persons and property of British subjects."

That the gist of the injury here complained of was the wrongful capture of the Circassian and her cargo, the subsequent condemnation and sale being merely incidents of the capture in the course of the adjudication by the tribunals of the United States, as to its lawfulness, merely for the purpose of determining whether the capture should be ultimately adopted as the act of the United States. That, when captured, this part of the cargo was not the property of the subjects of Her Britannic Majesty. That the abandonment by the insured to the insurers after capture, the acceptance of such abandonment by the insurers, and payment as for a total loss, simply operated as a transfer to the insurers of the rights of the assured in respect of the capture; and that the insurers stood merely as subrogated to the rights of the owners at the time of the capture, and as their equitable assignees. That such transfer by operation of law gave to the insurers as equitable assignees no better standing before the commission than they would have in case of a claim for any other injuries to the persons or property of individuals not subjects of Her Britannic Majesty, but who had assigned their claim against the United States for such injuries to a British subject. That so far, there-

fore, as the property of these "French merchants" on board the Circasian was concerned, no right of reclamation against the United States under the treaty existed in the claimants.

The commission (Mr. Commissioner Frazer dissenting) made awards in favor of all the claimants. To the claimants in No. 432, the sum of \$71,428, in No. 433, the sum of \$20,450, and in 444 the sum of \$133,296. I am advised that these respective sums in Nos. 432 and 444 were taken by the commission as the actual proceeds of the sales of the vessel and cargo, respectively, reduced from United States currency at its value at the date of sale to a gold basis, and without the allowance of any interest. The award in No. 444 covered as well the proceeds of the cargo belonging to the French merchants as the portions owned by British subjects.

Mr. Commissioner Frazer read a dissenting opinion, which will be found in the Appendix N.

The schooner *Jane Campbell*; George Campbell, claimant, No. 453.

This vessel was captured by a vessel of the United States blockading squadron in December, 1861, off the port of Beaufort, N. C. She was taken into the port of New York and there libelled in the United States district court. That court made a decree awarding restitution of the vessel and certifying probable cause of capture, but finding upon the evidence that the captors had been guilty of unjustifiable conduct toward the crew and cargo and stores of the vessel in the matters hereinafter named, ordered a reference to prize commissioners to ascertain and report to the court the damages sustained in consequence of such alleged misconduct. (The case is reported in *Blatchford's Prize Cases*, 107, 130.) Under this order no proofs were offered by the claimants in the district court, nor any further proceedings had as to such alleged damages; and no appeal was taken from the decree of the district court.

The proofs in the prize court were not put in evidence before the commission, but the claimant rested the case here on his own deposition taken before the commission.

From the testimony of the claimant himself, it appeared that he was, down to August, 1861, a resident of Petersburg, Va.; that the vessel was of American build and register, and was bought by him in July, 1861, in Washington, N.C., a blockaded port of the enemy. He bought her for the alleged purpose of taking his family from North Carolina to Liverpool; and in August, 1861, took her out through the blockade, and subsequently caused her to be registered as a British vessel. The district court found, upon the proofs before it, that the vessel when captured was apparently approaching the blockaded port of Beaufort, N. C., with intention to enter it. The claimant alleged in his memorial, and stated in his deposition, that he was on a voyage from Liverpool to Havana; that he was compelled by stress of weather and injuries received to seek

assistance off the coast of North Carolina, and approached the blockading fleet for that purpose, making known his condition, but his vessel was thereupon seized and sent in for libel. The memorial also alleged, and the prize court found upon the evidence before it, that on the capture of the vessel the claimant, who was on board of her, was, with some of the ship's company, taken from the schooner, placed on board a United States vessel, and carried to Fortress Monroe and there landed, while the vessel, with her captain and the remainder of her cargo, was taken to New York, and that the prize crew, while on board, broke open the hatches and the store-room and appropriated portions of the cargo and stores. The memorial claimed damages for the detention of the vessel and the injuries to the cargo and stores, £3,260, besides interest.

The claimant assigned in his memorial, and in his deposition, as the reason of his omission to make proof of his damages in the district court, and to appeal to the Supreme Court, that he was informed by the assistant district attorney of the United States that if he persisted in the prosecution of his claim for damages, the United States would appeal from the judgment of restitution rendered by the district court; and that knowing that this course would probably keep his property locked up for years, and not being in a position to bear such a loss, he took away the vessel and cargo without any further prosecution of his claim for damages.

On the part of the United States it was contended that the purchase of the vessel by the claimant within a blockaded port of the enemy, she being at the time an enemy's vessel, and the claimant at the time of the purchase an enemy by domicile, and the subsequent taking her out through the blockade, followed by change of domicile of the owner and of registry of the vessel, did not change the character of the vessel from an enemy to a neutral. That the purchase of a private merchant-ship of the enemy by a neutral in time of war, when made in a neutral port, if not *per se* illegal, is always liable to great suspicion, and demands proof of good faith and of payment of full consideration. (3 Phill., 607.) That such sale when made in a blockaded port of the enemy was absolutely void; and that if the facts of this pretended sale had been made to appear in the prize court, the vessel must there have been condemned as enemy's property. That the claimant had full opportunity to make proof and receive an award for his alleged damages in the prize court; and that having voluntarily abandoned the pursuit of his remedy there, he could not now be heard to make reclamation before the commission. That the reason alleged by him for his omission to prosecute his claim for damages in the prize court, made his case no better. That the law-officer of the United States had an undisputed right to say to the claimant, as he did in effect: "If you choose to claim damages of the United States I shall take an appeal and test the question of the right of condemnation in the appellate court; but if you are willing to take the vessel without claim of damages I will waive my

right of appeal, and allow you to depart with the vessel and cargo." That the claimant's abandonment of the right thus given him to make proof in regard to the misconduct of the captors rather than have the question of condemnation reviewed on appeal, was clearly "an acknowledgment of the justice of the sentence." That by the claimant's omission to produce before this commission the testimony taken in the prize court, he was debarred from alleging that the evidence in that court was insufficient to sustain the decree certifying probable cause of capture.

The commission unanimously disallowed the claim.

6. *Claims for damages by reason of the alleged unlawful warning off of vessels from coasts of the States in rebellion by United States vessels of war.*

These claims were three in number—that of Benjamin Whitworth and others, owners of the ship *Boyne*, No. 216; that of Andrew Ewing Byrne and others, owners of the ship *Monmouth*, No. 315; and that of Matthew Isaac Wilson, owner of the bark *Hilja*, No. 467.

The *Boyne* (No. 216) sailed from Fleetwood, Lancashire, England, on the 25th March, 1861, with a cargo of coals for Savannah, Georgia. On the 11th May, when near the entrance of the harbor of Charleston, S. C., she was boarded by an officer of the United States steam-frigate *Niagara*, who made this entry upon her register :

Warned off the whole coast of the South by the United States steamer *Niagara*, May 11, 1861. Edward E. Potter, lieutenant, United States Navy.

In consequence of this warning she abandoned her voyage to Savannah, and went to New York, where it was alleged that she disposed of the cargo of coal at a rate much less than it would have commanded in Savannah, and took a homeward freight from New York of much less value than she would have secured from Savannah. In fact, at the date of the warning no sufficient blockade had been instituted at Savannah or at any other port south of Charleston; the actual blockade of Savannah not having commenced until the 28th May. The memorial claimed damages by reason of loss on outward cargo, and on return-freight below that which she would have earned from Savannah, and by detention of the vessel, £6,460 13s. 0d., besides interest.

The *Monmouth* (No. 315) sailed from Liverpool in March, 1861, with a cargo of salt, under written instructions to proceed to Charleston and deliver vessel and cargo to consignees there; and if that port should be found blockaded, then to go to Savannah; and if he failed in getting a cotton freight at either Charleston or Savannah, then to go to St. Stephen, New Brunswick, and load with a cargo of deals for the return voyage. On the 12th May she arrived off the harbor of Charleston;

was boarded by an officer of the blockading vessel *Niagara*, and the following entry made upon her register:

Boarded; informed of the blockade; and warned off the coast of all the Southern States by the United States steamship *Niagara*, May 12, 1861.

The master thereupon abandoned his voyage to Charleston and Savannah, and went to St. Stephen, New Brunswick, where he disposed of his cargo of salt and took his return cargo of deals. The memorial claimed damages by losses on her cargo of salt and of return freight, short of what she would have received from Savannah; and costs, and charges, and delay, to which she was necessarily subjected by her change of destination, £10,572 10s. 0d.

The *Hilja* (No. 467) sailed from Liverpool on the 25th March, 1861, in ballast, for Charleston; the memorial alleging that she intended to load, on freight at that port or at Savannah, a return cargo of cotton for Liverpool. She was boarded by an officer of the United States steamship *Niagara* off Charleston Harbor, on the 12th May, and a warning entered upon her register, substantially the same as in the case of the *Monmouth*. The memorial alleged that the captain of the *Hilja*, having an alternative destination to Savannah, was debarred from proceeding to that port by this warning; that she thereupon proceeded to Pugwash, but gave no information as to her earnings by her return freight. Damages were claimed to the amount of £6,101 3s. 7d., besides interest—the amount of freight which, it was alleged, the vessel would have earned by a return cargo of cotton from Charleston or Savannah.

The sailing orders of the *Hilja* were not put in evidence nor accounted for, though it appeared that she sailed under written orders; nor was any evidence adduced as to her alternative destination to Savannah, except that of the claimant himself, examined on notice, who, after many evasive and contradictory answers on cross-examination as to the destination of the vessel, finally summed up his evidence in this regard by saying: "I think I mentioned to him verbally that if freights were better at Savannah he was to go there." The claimant also testified that he had, through Mr. A. E. Byrne, (claimant in No. 315,) had correspondence with the British foreign office in respect to this warning off of his vessel, and that he had had like correspondence with Her Majesty's consul at Charleston, through Messrs. Robert Muir & Co., and that there had also been correspondence between Muir & Co. and himself, and between Henderson, the master of the vessel, (since dead,) and himself; but none of this correspondence was either produced or accounted for. No proof was made as to the avails of the return freight from Pugwash, except the general statement of the claimant in his deposition that "the whole voyage brought in a loss;" and on cross-examination the claimant, when questioned as to his transactions in connection with violating the blockade during the war, and furnishing

aid to the confederate government, declined to answer all such questions.

It appeared that an actual blockade of the port of Charleston was established by the presence of a sufficient blockading force at the dates of the respective warnings of the three vessels.

The three cases were argued and submitted together.

On the part of the United States it was contended that the warning entered upon the register of these vessels, respectively, so far as applicable to any unblockaded ports, was without authority of the United States, a clear error on the part of the officer giving the warning, insufficient to preclude the further voyage of the vessels warned to any unblockaded port, and had never been adopted or ratified by the United States; that the case rested on the voluntary abandonment, by the masters of the *Monmouth* and the *Boyne*, respectively, of their alternative voyage to Savannah, upon an incorrect warning, unduly given by an unauthorized officer of the United States, and that for such loss no reclamation lay against the United States.

In the case of the *Hilja*, it was maintained on the part of the United States that the proof showed no alternative destination to Savannah; that the vessel was merely stopped from entering the blockaded port of Charleston, to which she was destined, and that no loss whatever was shown to have accrued to her, except that caused by her being prevented from entering that port, and that no proof was made of actual loss even in this respect; that the non-production, by the claimant Wilson, of the correspondence with the British foreign office, and with the British consul at Charleston, as well as his own correspondence with his captain, Henderson, and his agents at Charleston, Muir & Co., sufficiently indicated that the claimant then put his claim for compensation solely on the ground of the illegality or insufficiency of the blockade of Charleston, and that the pretended alternative destination to Savannah was an afterthought, borrowed from the cases of the *Monmouth* and the *Boyne*; that his own testimony, on which he rested the case, was upon its face unworthy of credit.

The counsel for the United States also claimed that in the case of an award of damages in any of these cases, the anticipated earnings by freights from Savannah, at high rates, could not be taken into account as elements of the award. That such anticipated earnings were speculative and illusory; that the evidence showed that the market at Savannah, in respect both of sales of the outward cargoes, and of the rate of freights, was exceedingly irregular and violent in its fluctuations, and in effect a gaming market. That it could not be assumed that the vessels could have secured return cargoes at Savannah in season to leave within the time limited after the establishment of the blockade there; nor that they could have secured such rates of freight as were claimed in the respective cases; and that these claims were of substantially the same nature of speculative and uncertain prospective profits, which

were rejected by the tribunal at Geneva, in the case of the claims for anticipated earnings and profits of captured vessels, claimed before that tribunal.

The commission in the case of the Boyne, (No. 216,) unanimously made an award in favor of the claimants for \$32,553.

In the case of the Monmouth, (No. 315,) they made an award in favor of the claimants for \$40,843; Mr. Commissioner Frazer dissenting on the question of amount.

In the case of the Hilja, (No. 467,) the claim was disallowed; Mr. Commissioner Gurney dissenting.

On the general question involved in these cases Mr. Commissioner Frazer read an opinion, which will be found in the Appendix O.

7. Miscellaneous cases.

In the case of Alfred Raoul Walker, No. 13, the claimant, a minor, by his guardian, alleged that he was born in Charleston, S. C., his father being at the time of his birth a British subject and resident at Charleston, as Her Britannic Majesty's vice-consul for that port and for the State of South Carolina; that by the will of Mrs. Laurens, the claimant, in May, 1858, became entitled to a legacy of \$20,000, to be paid to him on coming of age, and the interest to be applied to his support and education. That the executors of Mrs. Laurens's will having filed a bill in the court of equity in the State of South Carolina, for the purpose of obtaining the protection of the court in respect to the trusts created by the will, made the claimant a party to the bill, and placed the moneys belonging to the claimant under the will in the receivership and under the control of the court; and that, under the protection of the court, the moneys so belonging to the claimant were invested in bonds of the Confederate States during the war. That "by reason of such investment for the purposes of carrying on civil war, and by reason of such civil war and rebellion, and by the act of the Government of the United States in suppressing the said rebellion and restoring the authority of the Federal Government," the claimant's moneys were totally and irrecoverably lost. That the court in question was a tribunal of competent power and jurisdiction to direct the investment and charge of such moneys; and that "the civil war, through the act of the Government of the United States, destroyed the investments." The claimant claimed an award for \$20,000, besides interest.

A demurrer was interposed on the part of the United States to the memorial, specifying, among other grounds, that the claimant was, by the laws of the United States, a citizen of the United States, and so could have no standing as a British subject under the treaty; that the alleged wrongs were perpetrated, if at all, by the pretended courts and authorities of the so-called State of South Carolina, while not acting under or by the authority of the Constitution, laws, or Government of

the United States, but while in rebellion against the United States and at war with them, and that for such acts the United States were not liable; that the claimant alleged that the court of South Carolina was a court having jurisdiction of the subject-matter and of the person of the claimant, and exercising such jurisdiction; and that the claimant, by his guardian, voluntarily submitted himself to such jurisdiction; that he did not allege the order or decree of the court to have been fraudulently made, or its treatment of the claimant's property to have been exceptional; and that for such action of a judicial tribunal, however erroneous, no claim could lie under the treaty. That the allegation that the civil war, through the act of the Government of the United States, "destroyed the investments of the claimant," formed no ground of claim against the United States.

The case was submitted without argument, and the claim was unanimously disallowed.

In the case of *Edward Alfred Barrett vs. The United States*, No. 18, the claimant, resident in England during the war, alleged that in October, 1864, he purchased for a valuable consideration and was still the possessor and absolute owner of a certain "cotton loan bond" of the Confederate States of America, by which the Confederate States bound themselves to pay to the bearer £200 sterling, with interest at 7 per cent. per annum, semi-annually, on the 1st day of March and the 1st day of September in each year, until redemption of the principal at par. That the Government of the United States, in the year 1865, "seized all the public assets of the said Confederate States and especially a very large quantity of cotton, hypothecated by the said Confederate States government for payment of the said cotton loan, and thus prevented those States from paying their cotton-loan bondholders." That in consequence of such seizure by the Government of the United States, the principal of said bond remained unpaid, and no interest had been paid thereon from the 1st day of March, 1865. The claimant claimed damages £200 besides interest.

The memorial came to the hands of the agent of the United States on the 14th November, 1871. Though insignificant in amount, it involved a principal of the highest importance; and it was understood that it was presented as one of a large number of claims of the same character already in the hands of Her Majesty's agent, and involving claims against the United States on account of debts of the late so-called Confederate States to very large amounts. The agent of the United States, believing the claim to be neither within the letter or spirit of the treaty, and to be one which ought not to have been presented by Her Majesty's government to the commission, immediately sent to the Secretary of State of the United States a copy of the memorial, with the following letter:

OFFICE OF THE AGENT OF THE UNITED STATES
BEFORE THE MIXED COMMISSION ON AMERICAN AND BRITISH CLAIMS,
No. 703 Fifteenth Street, Washington, D. C., November 15, 1871.

SIR: I have the honor to submit herewith a copy of the memorial of Edward Alfred Barrett, yesterday filed with the Washington commission under the British treaty.

You will notice that it is based solely on an alleged liability of the United States for payment of the cotton loan (so-called) of the late Confederate States, (so called.) It is the first claim of this character which has been presented to the commission.

Believing such claims to be entirely outside the submission made by the twelfth article of the treaty, and that the Government of the United States never has consented to submit to arbitration any question of their liability for debts of this character, and that it is not within my province to discuss or consent to the discussion of the question of such liability before the commission, I beg to submit the case to you for specific instruction.

The questions involved seem to pertain more directly to the diplomatic relations of the two countries than to any mere question of legal practice or construction.

Very respectfully, your obedient servant,

ROB: S. HALE,

Agent and Counsel of the United States.

Hon. HAMILTON FISH,
Secretary of State.

I am advised that the Government of the United States thereupon immediately, through Mr. Schenck, the minister of the United States at the court of St. James, protested against the presentation of such a claim as not within the terms of submission by the treaty, and requested of the British government that the claim be withdrawn. This request not having been complied with, the agent of the United States, under specific instructions from the Secretary of State, on the 9th December, 1871, filed with the commission a motion to dismiss the memorial for want of jurisdiction, as stating no case for a claim against the United States within the intent of the treaty. On this motion the agent of the United States, on the 13th December, 1871, submitted a printed argument, as follows:

BEFORE THE MIXED COMMISSION ON AMERICAN AND BRITISH CLAIMS.

EDWARD ALFRED BARRETT }
 vs. } No. 18.
THE UNITED STATES. }

Argument for the United States on motion to dismiss.

By the twelfth article of the treaty the claims against the United States submitted to the adjudication of the commission are those of subjects of Her Britannic Majesty, "arising out of acts committed against the persons or property of subjects of Her Britannic Majesty" during the time limited by that article.

This language is plain and unambiguous. It limits the claims to those technically known as "torts," and those "torts" committed against the "persons or property" of the claimants.

It could not be contended that the claims so submitted would include a claim on contract against the United States, though founded directly on a contract duly executed by an authorized officer of that Government, and plainly violated by that Government.

Much less can it be held to include a contract executed by and in the name of an in-

urrectionary organization, in violation of the Constitution and laws of the United States, seeking the subversion of that Government, levying war upon it, and finally suppressed by its power.

Notwithstanding the specious attempt to disguise the true nature of this claim under an allegation of the destruction by the United States, in war, of property "hypothecated" by the so-called Confederate States for the security of their debts, it is really neither more nor less than a claim to hold the United States liable for the debts of those lately in rebellion against them, contracted in the very course of such rebellion, in aid of it, and from which it drew its chief support.

To believe for a moment that the United States ever intended to submit such a question to arbitration would be, at the same time, to do violence to the language of the treaty, and to falsify the history of that Government by imputing to it a pusillanimity wholly unwarranted by anything in its past career or present condition. It would be to believe that the United States have deliberately signified their willingness, at the award of this commission, to pay debts contracted by their defeated enemies, for the sole purpose of the dismemberment of their Government and the destruction of their liberties; debts held in the deepest abhorrence by the unanimous sentiment of their loyal people, and debts, the assumption or payment of which, in any form, by the United States, or any one of their constituent States, has been prohibited by solemn constitutional enactment, by that fundamental law to which all treaties, as well as all statutes, are subject.

When the Government and people of the United States shall acknowledge that in their recent successful struggle with rebellion they were wholly in the wrong, and the rebels wholly in the right; when they shall determine to compensate the rebels themselves for *their* losses in person and property by the war, to pension *their* widows and orphans, and to repudiate the debt of the Federal Government contracted for the *suppression* of the rebellion; then, and not till then, will they consider the question of paying the mercenary foreign subscribers to the rebel loans, more criminal in their eyes, or at least sharing more of their abhorrence, than any other participants in the gigantic crime.

The language of the treaty itself is believed to be abundantly specific in excluding claims of the character of that in question. If any ambiguity could be found in that language, it would be fully removed by reference to the protocols of conference of the Joint High Commissioners, and to facts of universal cognizance in connection with them.

By the 35th protocol, under the head of "Articles XII to XVII," it appears that the American commissioners, when invited by their British colleagues to include within the terms of the treaty another class of claims by Her Majesty's subjects against the United States, declined so to do, saying, "That, in their view, the subject was not embraced in the scope of the correspondence between Sir Edward Thornton and Mr. Fish under either of the letters of the former; and that they did not feel justified in entering upon the consideration of any class of claims not contemplated at the time of the creation of the present commission," &c.

Referring to the correspondence between Sir Edward Thornton and Mr. Fish, named in the protocol, it will be found that the first mention of or reference to the claims covered by the twelfth article, is contained in the letter of Sir Edward to Mr. Fish, under the date of February 1, 1871, and that in that letter he designates them as claims "arising out of acts committed," &c., the same language which was subsequently copied into the treaty, and, with the addition, by way of giving greater point and accuracy, of the further words, "against the persons or property of subjects of Her Britannic Majesty."

It must be borne in mind that at the time of this correspondence, as well as at the time of the conclusion and ratification of the treaty, the Constitution of the United States contained an express prohibition of the assumption or payment of these debts by the United States or by any State. That every officer of the United States, execu-

tive, legislative, and judicial, was thus bound by the supreme law of the land and by his oath of office to treat as utterly null any provision of any treaty or statute in contravention of that constitutional prohibition, under penalty of impeachment or its equivalent. That the existence of this constitutional provision was well known, not only to the Secretary of State, the Commissioners, the Chief Executive, and the Senate of the United States, all parties on the part of the United States to the treaty or to this preliminary correspondence, but was equally well known to the British minister and to the British High Commissioners. It cannot, therefore, be for a moment believed that the American Secretary, in his acceptance of the proposition of Sir Edward by his letter of February 3—the President of the United States, in directing that acceptance—the American members of the Joint High Commission in negotiating and concluding the treaty—the President in ratifying, or the Senate of the United States in advising and consenting to the same—ever intended to embody in it a provision which should violate the fundamental law of the nation, or that the ministers and commissioners of Her Britannic Majesty so understood them to intend.

In case, too, of any possible ambiguity, it must be borne in mind that this language first emanated from Her Majesty's minister, and that by the settled rules of diplomatic as well as legal construction, the party employing ambiguous language is debarred from any benefit of the ambiguity.

But the United States insist that the language is not ambiguous; that it is plain and explicit, and that within it a claim of this character has no place among the matters submitted by the treaty to this commission for its decision.

The undersigned is warranted in saying that the words "arising out of acts committed," were deliberately and intentionally inserted by Sir Edward in his letter of 1st February, repeated by Secretary Fish in his letter of 3d February, and copied and elaborated by the Joint High Commissioners in the twelfth article of the treaty, for the express purpose of excluding all possible claims of the nature of the debts of the States lately in rebellion, singly or under any attempted and abortive organization.

If the counsel for the United States deemed himself at liberty to discuss the merits of the claim here presented, as within the jurisdiction of the commission to decide, the answer to the claim, on its merits, would be palpable, self-suggesting, and conclusive.

But he expressly disclaims all intention of such discussion, and asks the dismissal of the claim on the ground specified in his motion.

ROB: S. HALE,

Agent and Counsel of the United States, &c.

On the 14th December, 1871, the commission made and filed their decision, unanimously dismissing the claim, as follows:

OFFICE OF THE MIXED COMMISSION ON BRITISH AND AMERICAN CLAIMS,
UNDER THE TREATY OF MAY 8, 1871,
Washington, D. C., December 14, 1871.

EDWARD ALFRED BARRETT }
vs. } No. 18.
THE UNITED STATES. }

The commission is of opinion that the United States is not liable for the payment of debts contracted by the rebel authorities.

The rebellion was a struggle against the United States for the establishment in a portion of the country belonging to the United States of a new state in the family of nations, and it failed. Persons contracting with the so-called Confederate States voluntarily assumed the risk of such failure and accepted its obligations, subject to the paramount rights of the parent state by force to crush the rebel organization and seize all its assets and property, whether hypothecated by it or not to its creditors. Such belligerent right of the United States to seize and hold was not subordinate to the rights

of creditors of the rebel organization created by contract with the latter; and when such seizure was actually accomplished it put an end to any claim to the property which the creditor otherwise might have had.

We are therefore of opinion that after such seizure the claimant had no interest in the property, and the claim is dismissed.

L. CORTI,
JAS. S. FRAZER,
RUSSELL GURNEY,
Commissioners.

In view of the attitude taken by the British government upon the presentation of the claim for so-called indirect damages in the "Case" of the United States before the tribunal of arbitration at Geneva, and of the intense feeling manifested by the British nation through the press and in Parliament and elsewhere on that subject, I have deemed this case worthy of specific and full report. The case involved in principle the question of the liability of the United States for the entire debt of the late Confederate States. If within the jurisdiction of the commission, it was plain that the United States might, by the decision of the commission, be held liable for so much of that debt as was held at the termination of the war by British subjects, the amount of which is of course a matter of conjecture merely, but which doubtless amounted to many hundred millions of dollars. It is impossible to believe that the Government of the United States could ever have designed to submit the question of such liability to arbitration; and it is certain that the people of the United States would never have consented to the submission in any form of such a question to arbitration, or to any measures of which the possible result might be to charge them with the payment of the debt of the Confederate States or any part of such debt. It is difficult to see why the presentation of such a claim to the commission, and the claim made by such presentation that the commission had jurisdiction under the treaty to make an award against the United States on account of this vast debt of their late enemies, the payment of which in any form had been prohibited by constitutional enactment, might not naturally and properly have produced among the people of the United States quite as intense an excitement, and quite as earnest and vigorous demonstrations of hostility to such submission as were manifested by the people of Great Britain in respect of the claims for indirect damages at Geneva. It is, however, worthy of note that during its pendency before the commission, the fact of the presentation of such a claim was not even in the public press or in Congress or in any other manner brought to popular notice, and no angry demonstrations were anywhere made in relation to it.

The disposition of the case before the commission, both in substance and form, seems to have been entirely satisfactory to both nations; and an analogy may perhaps be noted between the manner in which the commission disposed of this claim, and that subsequently adopted by

the tribunal at Geneva in respect to the claims for the so-called indirect damages.

In the case of William Adam, (No. 72,) the claimant, a British subject domiciled in England, alleged that he was, in 1862, the owner of certain bonds of a railroad company within the United States, amounting to \$5,000 principal, with interest, payable half yearly, at six per cent. per annum, the interest upon which had been regularly paid in specie up to the 31st December, 1861. That in the year 1862, the Congress of the United States passed a law making paper money a legal tender without any protection to pre-existing contracts; and that immediately after that law the paper money of the United States became depreciated in value, and the claimant was thenceforward compelled to receive payment of his interest in such depreciated currency, and that the bonds themselves and the prospective interest to become due thereon, had likewise become depreciated in consequence of the same legislation. That the Supreme Court of the United States had, in 1871, adjudged the act of 1862 valid in its application to pre-existing debts. He submitted with his memorial a computation of his losses in the premises, and claimed damages \$3,309, besides interest. A demurrer was interposed to the memorial on behalf of the United States, on the ground that it stated no case within the jurisdiction of the commission, and no facts showing any liability for compensation to the claimant.

The commission unanimously made an award as follows :

The commissioners are of opinion that the matters alleged in the memorial do not constitute the basis of any valid claim against the United States. The claim is therefore disallowed.

In the case of Joseph W. Roach, No. 154, the claim was for the value of the brigantine Madeira and her cargo, which was alleged to have been, on the 3d October, 1863, run into by the Clyde, a steamer transport owned by the United States, and the vessel and her cargo thereby sunk and totally lost. That the collision took place in the course of a lawful voyage of the Madeira from the port of Saint John's, Porto Rico, to the port of New York; and that the Clyde was then upon a voyage for the Government of the United States, and under the charge of officers of that Government. That the collision happened entirely through the neglect and default of the officers of the Clyde. The memorial claimed damages \$14,969.50, besides interest. The proofs filed sustained the allegations in the memorial as to the loss of the vessel and cargo by the default of the officers of the Clyde, and showed that the matter had been investigated by the claims commission of the War Department, and a report was made by that commission in January, 1867, assessing the damages of the claimant at \$11,373.98, besides interest. The only question raised in the case was as to the amount of damages to be allowed. The commission unanimously awarded the claimant \$14,081.

Claim of William Scott Millar, No. 157. The memorial in this case alleged that the claimant, a British subject domiciled at New Orleans, was, on the 25th September, 1864, the owner of 330 bales of cotton, then worth \$223,253. That on that day the cotton was unlawfully seized and taken from his possession by a supervising special agent of the United States Treasury Department, and was proceeded against for forfeiture to the United States, by libel of information filed in the United States district court for the district of Louisiana. That the claimant appeared in that suit, and claimed restitution of the cotton, but that it was detained till December, 1864, when it was surrendered to him upon the execution of a bond by him with sureties to the United States, conditioned to abide the decree of the court upon the libel. That between the date of the seizure and the date of the release the cotton largely depreciated in value, and the claimant was also compelled to pay large sums by way of costs. Damages were claimed by reason of the depreciation in value and the costs paid, \$90,145, besides interest.

The proofs showed that the cotton in question was purchased at points within the confederate military lines in the State of Mississippi, under alleged permits issued by a special agent of the United States Treasury Department, and was seized on its way through those military lines and into the territory held by the United States forces. The district court dismissed the libel for confiscation with costs. No claim for damages by reason of the seizure appeared to have been interposed by the claimant in that court, and no damages were there awarded him.

On the part of the claimant it was contended that the decree of acquittal by the district court without certificate of probable cause conclusively established the seizure as wrongful. That the United States were responsible for the seizure as made by an authorized agent of the Treasury Department in the line of his duty and under color of acts of Congress. And that the act of the agent in making the seizure had been expressly adopted by the Government by instituting proceedings for the forfeiture of the property. The counsel for the claimant cited *Gelston vs. White*, (3 Wheat., 246, and cases there cited;) *The Appollon*, (9 Wheat., 332;) *Hall vs. Warning*, (2 McLean, 332, and cases there cited;) *The Caledonian*, (4 Wheat., 100;) *Taylor vs. United States*, (3 How., 197.)

On the part of the United States it was maintained that the proofs conclusively showed the purchase of the property by the claimant within the enemy's lines, and his attempted transportation of the same through those lines into the Federal jurisdiction, to have been illegal and not warranted by his permits; that the cotton should have been condemned by the district court; that the decree of that court was not conclusive against the United States upon the claim now preferred for damages, and that the commission were entitled to look into the proofs and adjudicate upon the question of the liability of the United States for damages as an original question; that the claimant might have presented and prosecuted his claim for damages against the United

States in the district court in the action brought against him for forfeiture, and might there have recovered his damages if lawfully entitled to the same; and that until he had exhausted his remedy before the tribunals of the United States, he had no standing to make reclamation before the commission. The commission unanimously disallowed the claim.

Amos Bigland's claim, No. 199, was for damages for the detention of the British steamship *Tubal Cain*, in the port of New York, from the 8th April to the 16th July, 1863, one hundred days; and damages were claimed, \$38,378, besides interest. The claimant was a British merchant domiciled in the city of New York. He chartered the *Tubal Cain* to one Mora for a voyage to Matamoras *via* Havana and back to New York. She was loaded by the charterer, and on the 8th April, being ready to sail, clearance was refused by the custom-house authorities, and she was seized by the United States authorities, the collector of the port and the military commander of the department concurring in the seizure, on the charge that she was undertaking to carry on an illicit voyage between New York and the blockaded ports of Texas, and was carrying out contraband of war destined for the confederacy, and was also carrying passengers engaged in contraband trade with the enemy, one of them being an agent of the Confederate States government engaged in the purchase of munitions of war. Mr. Edwards Pierrepont, of New York, was commissioned by the War Department to examine and report upon the case. On the 26th May he made his report, sustaining in substance the charges named as to two passengers, Blum and Sutton, whom he found having contraband goods on board intended for the Texas trade, and engaged in the service of the enemy; but reported that neither the owner or charterer of the vessel had knowledge that any of the goods shipped were contraband of war or were intended for illegal trade. He further reported that there was reasonable cause for detaining the vessel, but recommended that the vessel be discharged from custody, and the goods be delivered up to the owners on their application and receipt for the same. The report was approved by the Solicitor of the War Department, and the vessel was surrendered on the 16th July and her cargo returned to the shippers, with the exception of the goods of Blum and Sutton.

On the part of the United States it was contended that the refusal to clear the vessel, her detention for examination, and the unloading of her cargo for that purpose, were lawful acts; that they were done under the authority of the regular custom-house officials of New York, and that the fact that those officials were aided by the military authorities in no respect affected the character of the transaction; that the facts of the case were such as in a prize court would have certainly justified the capture as one by "probable cause" if the vessel had been captured on the high seas and brought into port and libelled as prize; that the same

principles were to be applied in the consideration of this case of detention, and that no liability existed against the United States on account of it.

The commission unanimously made an award in favor of the claimant for \$4,800. I am advised that this award was made in respect only of the detention of the vessel, between the date of Mr. Pierrepont's report and her final discharge, the commission holding that detention unreasonable.

In the case of Thomas Grant, No. 211, the claimant, in addition to his claim for tobacco, captured in running the blockade from Wilmington, before reported, claimed \$7,000 damages for the alleged breaking up of his lawful business as a manufacturer of tobacco by the "terrific shelling of the city of Petersburg," by the United States forces in 1864 and 1865, "which was so violent at times, during the period of ten months, that no business could be regularly and successfully conducted within the city limits." He also claimed the further sum of \$1,440 for his interest in a quantity of tobacco, which he alleged was lost in South Carolina while in the course of transportation to remove it out of the reach of the Federal Army under General Sherman. It was not alleged that the loss was caused by the United States forces except as the remote cause of the removal. On demurrer the commission unanimously disallowed the claim.

In the case of William Cleary, No. 220, the claimant, among other claims set up in his memorial, claimed \$5,000 damages for an alleged violent assault, wounding, and ill treatment committed upon him by a private soldier of the United States Army, at Savannah, in March, 1865, by which he alleged that his life was endangered and himself disabled for some months. No allegation or proof was made connecting any officer of the United States, or any other person except the assailant, with the alleged assault. The commission made an award in favor of the claimant in respect of property taken for the use of the United States, but gave nothing on account of the alleged assault.

In the case of Sheldon Lewis, No. 287, the claimant alleged that, in March, 1863, he was the owner of the bark Matilda A. Lewis, on which vessel was laden in that month a quantity of fowls destined for Havana. That the officers of the United States refused to permit the vessel to leave with the fowls, and took possession of them. That subsequently the consignee of the fowls in Havana brought suit against the vessel in the United States district court for the southern district of New York for the value of the fowls, and recovered judgment for \$1,100, for which amount, with the additional sum of \$600 costs expended by him, the claimant claimed an award.

It appeared from the evidence that, by order of the Secretary of the Treasury of 19th May, 1863, officers of the custom-houses of the United States were directed to refuse clearances for the exportation of "horses,

mules, and live-stock," and to cause the detention of all animals attempted to be so exported. That the fowls in question had been shipped by one Glas upon the vessel for Havana; that the customs officers in New York construed the order of the Secretary of the Treasury as covering fowls, refused to grant clearance for them, and ordered them to be relanded. The fowls were relanded and delivered to the shipper, and the charterer of the vessel having produced to Glas one of the triplicate bills of lading, Glas signed a memorandum on same, annulling the bill of lading. Meantime Glas had procured from the agent of the consignees at New York an advance of \$700, on one of the triplicate bills of lading for the fowls. This fact was not disclosed to the charterer when the bill of lading was cancelled by Glas. The consignee subsequently brought suit against the vessel and recovered on the ground of his advance made to Glas upon the bill of lading, and that the surrender of the fowls by the charterer to Glas, and the cancelling of the bill of lading by Glas did not prejudice his rights, and that the order prohibiting the exportation of live-stock was unlawful, and that if lawful it was not intended to include fowls. (See report of the case *Desvernine v. The Bark Matilda A. Lewis*, 5 Blatchford's C. C. R., 520 to 523.) In a like case, subsequently brought to the notice of the Secretary of the Treasury, and involving the construction of the order of 19th May, 1863, the Secretary held that the order did not cover poultry.

On the part of the United States it was contended that the construction placed by the custom-house officers upon the order of the Secretary of the Treasury was evidently an unjust and forced construction; that if application had been made at once to the Secretary of the Treasury, the decision of the customs-officers at New York would have been overruled, and that the United States were not responsible for the error of judgment of such subordinate officers till proper resort was had to some responsible and chief officer of the Government, whose decision upon the question might bind the Government. Also, that if the United States were liable for the wrongful acts of the customs-officers, the claimant was in no position to maintain this claim; that the charterer of his vessel had wrongfully allowed the fowls to be returned to Glas, the shipper, on his cancellation of one of the bills of lading, without calling in the others, upon one of which the advance of the consignees had already been made; that the owner of the vessel had therefore been made liable solely by the default of his charterer, by whose acts certainly the United States could not be prejudiced.

The commission made an award in favor of the claimant for \$1,849; Mr. Commissioner Frazer dissenting.

Messrs. A. E. Campbell & Co., claimants in No. 290, claimed from the United States \$25,831, besides interest, the alleged value of a cargo of sugar on board the brig John Welch, which brig was alleged to have been captured by the privateer Jeff. Davis, and carried into Charleston, S. C., where her cargo was sold, but the proceeds of the claimant's por-

tion of the same were held by the confederate government, to be refunded to the claimants. The memorial further alleged that, "in the month of February, 1865, the United States troops took military possession of Charleston, S. C., and seized the confederate treasury and all confederate property therein, and shortly afterwards seized and took possession of all property, whatsoever or wheresoever, belonging to or in the possession, custody or control of the said Confederate States, including the proceeds of the cargo above referred to." The United States interposed a demurrer to the memorial. On the argument of the demurrer, Her Majesty's counsel, on behalf of the claimant, urged that it was possible for the claimants, under the allegations of the petition, to make out a case of property taken by the United States, "by showing that the proceeds of their sugar were kept separate and distinct from the funds of the confederacy, and marked or noted as theirs, and thus remaining in specie were captured." That in such case they might be entitled to recover. On this ground the demurrer was overruled by the commission. Subsequently the claimants having failed to make any proof of such capture of their property in specie, and appropriation of it by the United States, the claim was unanimously disallowed.

The case of Barron, Forbes & Co., No. 314. In this case the claimants alleged that in the year 1845 one Andres Castillero, a Mexican citizen, became the owner, under the mining laws of Mexico, of a valuable quicksilver mine in California, then a part of the Mexican territory, since known as the New Almaden mine. That on the subsequent acquisition of California by the United States they were notified of Castillero's title. That in 1846 and 1847 the claimants duly succeeded to the title of Castillero. That by the treaty of Guadalupe-Hidalgo, between the United States and Mexico, by which treaty Mexico surrendered California to the United States, the faith of the United States was pledged that property of every kind belonging to Mexicans should be "inviolably respected." That in March, 1851, the Congress of the United States passed a law which in effect proceeded on the assumption that all unoccupied land in California was public property, and which allowed proof to be taken by alleged owners of the titles before commissioners appointed for that purpose, with the right of appeal to the United States courts, and finally to the Supreme Court of the United States; thus casting upon the claimants onerous burdens in the establishment of their lawful title. That this act was, in effect, a confiscation in favor of the United States of all landed property in California, subject only to its being averted by such proofs; and was, "in its spirit and effect, a violation of the rights of property, and an infraction of the true intent and meaning of the said treaty." That the claimants filed their claim before the commissioners in California on the 30th September, 1852, and that those commissioners, on the 8th January, 1856, affirmed the claim of the claimants as to a portion of the property, but rejected it as to the remainder, on the ground that their title under the alleged grant, as

to the property in respect of which their claim was rejected, was inchoate and imperfect at the date of the treaty of Guadalupe-Hidalgo. That the United States appealed from the decision of the commissioners to a tribunal, composed of the circuit and district judges of the United States sitting in California, under the statute; which tribunal, in 1857, issued an injunction restraining the claimants from further working the mine until the further order of the court. That this tribunal finally, on the 18th January, 1861, rendered a decree substantially confirming the decision of the original commissioners, establishing the title of the claimants to a part of the property and rejecting it as to a part. That from this judgment both the claimants and the United States appealed to the Supreme Court of the United States; which court, in the year 1863, rendered a final judgment reversing that part of the decree which established claimants' title to a portion of the property, and dismissing claimants' appeal as to the other portion of the decree, and remanding the cause with direction to dismiss the entire petition. The report of the case, in the Supreme Court, is found in the second volume of Black's Reports, page 17, under the title of "*The United States vs. Castellero.*"

The memorial disclaimed all imputation of intentional wrong by the Supreme Court of the United States, but alleged that their final judgment was erroneous; and further alleged that, immediately after the decision of the Supreme Court, an order was issued by the President of the United States, to the United States marshal for California, directing that the memorialists be ejected from their property, and that it be placed in the possession of an agent of the United States. That, "while thus under pressure and duress, and threatened with eviction from their property," by the United States, the claimants gave a quit-claim of their interest in the entire property to a Pennsylvania corporation—the Quicksilver Mining Company—receiving for this conveyance the sum of \$1,750,000, and that their grantees had since remained in possession of the mine, "undisturbed by any claim of the United States;" and had received, and still continued to enjoy, a revenue of about \$1,000,000 per annum from the mine. It also alleged various acts of unfairness and oppression by the attorneys, agents, and officers of the United States during the pendency of the litigation in the lower courts, before the final appeal to the Supreme Court. The claimants claimed an award for about \$16,000,000, besides interest. A demurrer was interposed to the memorial, on behalf of the United States, on the following grounds:

1. The said memorial sets forth no acts committed against the property of the claimants within the time limited by the treaty for which the United States are responsible, or on account of which reclamation lies in favor of the claimants against the United States.
2. The allegations in the memorial of the alleged injuries to the claimants' rights by the passage of the law of 3d March, 1851, as alleged in paragraph 15 of the memorial; and by the alleged wrongful and oppressive acts of the United States and of their officers and agents in their opposition to the allowance of the claimants before the

commissioners, as set forth in paragraph 20 of the memorial; by the appeal and other alleged unjust and oppressive proceedings set forth in paragraph 21, and by the proceedings set forth in paragraphs 22, 23, 24, 26, 27, 28, 29, 30, 31, and 32, show all of said transactions to have taken place before the 13th day of April, 1861; and thereby the said transactions are not the subjects of reclamation before this commission.

3. The decision of the Supreme Court of the United States upon the claims of the memorialists in the year 1863, as set forth in paragraphs 33, 34, 35, and 36, of the memorial, and the alleged acts of the President of the United States in execution of the judgment of said court, as set forth in paragraph 37, do not constitute an act or acts against the persons or property of subjects of Her Britannic Majesty within the provisions of the twelfth article of the treaty, by occasion of which reclamation lies against the United States.

4. The only acts alleged in the memorial as occurring within the time limited by the treaty are the judgment of the Supreme Court of the United States upon a cause duly and lawfully pending before them, and the proceedings in due course of law for the enforcement of execution upon the said judgment; the memorial distinctly negating any allegation of fraud or willful injustice in the said court, no reclamation lies on behalf of the claimants before this commission by reason of such judgment, or the lawful proceedings in execution thereof. This commission has no jurisdiction to review the judgments of the regularly-constituted judicial tribunals of the United States or of Great Britain, at least in the absence of allegations of fraud, corruption, or willful or intentional injustice or injury.

5. The memorial shows (paragraph 39) that the claimants or their predecessors, before eviction from their said property under the said judgment, voluntarily sold and conveyed to another party, to wit, the Quicksilver Mining Company, all their rights in and to the premises in question; and that their said grantees have since remained in undisturbed possession of the property in question. The claimants, therefore, appear to have never been disturbed in the possession of their said alleged property; and no injury is shown to them or their rights, on account of which reclamation lies against the United States.

6. No reclamation lies on behalf of the claimants against the United States on account of any alleged infraction by the United States of the provisions of the treaty of Guadalupe Hidalgo, the provisions of that treaty protecting the rights of property only of Mexicans, citizens of the republic of Mexico, and not of subjects of Her Britannic Majesty.

7. The allegations in the memorial do not show any infraction by the United States of the provisions of the treaty of Guadalupe Hidalgo.

8. The allegations in the memorial show no infraction by the United States upon any rights of the claimants or their predecessors under the law of nations.

9. The allegations in the memorial show a case simply of adjudication by the regular judicial tribunals of the United States having jurisdiction of the subject-matter, and of the persons of the parties, concerning property lying within the limits of the United States, without fraud, corruption, oppression, or willful injustice. Such adjudication is not reviewable by this commission, and the parties to the same have no standing for reclamation against the United States.

10. The allegations in the memorial fail to show the claimants British subjects, or entitled to a standing as such before this commission.

11. The allegations in the memorial fail to show the present claimants to have succeeded to any alleged title of Andres Castillero in or to the property in question, or to any title of the original firm, so-called, of Barron, Forbes & Co., to the said property.

12. The allegations in the memorial fail to show any title in Andres Castillero, the alleged source of title in the claimants in or to the premises in question.

13. The allegations in the memorial fail to impeach the judgment of the Supreme Court of the United States upon the said case pending before them, or to show said judgment in any respect erroneous.

On the argument it was contended, on the part of the United States :

1. That all the allegations in the memorial touching the unjust action of the United States by its statutes and legal proceedings prior to the 13th April, 1861, were outside the jurisdiction of the commission as established by the treaty ; and if the United States or their authorized agents had been guilty of any wrong in these respects, such a wrong was not within the jurisdiction of the commission.

2. That the only act of the United States or any of their officers alleged in the memorial to have been committed within the treaty time, is the adjudication by the Supreme Court of a case regularly pending before it on appeal by both parties from an inferior tribunal. That this decision is in express terms admitted by the memorial to have been honestly rendered without corruption or partiality. That such action of the court is not an act committed against the persons or property of subjects of Her Britannic Majesty, within the meaning of the twelfth article of the treaty.

3. That the claimants were never, within the treaty time, disturbed in their possession of the property which they claim, or evicted therefrom. That at the conclusion of the litigation they voluntarily parted with all their pretended title to the property, and surrendered its possession to their grantees, who have since remained in undisturbed possession.

4. That the claimants have no standing to claim for any alleged infraction by the United States of the provisions of the treaty of Guadalupe-Hidalgo. That that treaty provided only for the protection of the rights of property of Mexicans ; and that the vindication of the rights of Mexico and her citizens under that treaty does not lie with the British government, and is not a subject submitted to the decision of this commission.

5. That under the rules of international law no ground of reclamation by Great Britain against the United States, on behalf of these her alleged subjects, appears from the memorial. They became parties litigant before the Supreme Court, a judicial tribunal of the United States, in respect of lands lying within the United States, and in a case in which the court had unquestioned jurisdiction. Their rights were, as they themselves admit, honestly and fairly, but, (as they allege,) erroneously adjudicated there. Without awaiting eviction from the premises, they voluntarily parted with their entire claim to the lands, mining privileges, and all enjoyments and profits of the same ; that if their grantees had been evicted from possession, the claimants could not be the parties to claim redress, having voluntarily surrendered all their rights ; but their grantees had not been evicted ; the whole estate with its vast revenues had continued to be enjoyed by the parties to whose enjoyment the claimants voluntarily ceded it.

On the part of the claimants it was insisted by Her Majesty's counsel that the annulling of the title of the claimants by the decree of the

Supreme Court in 1863, and the direction by the President of the United States to the United States marshal in California to expel the claimants from their property, constituted acts against the property of British subjects, bringing them within the jurisdiction of the commission. That the conveyance by the claimants to their grantees was a conveyance under duress of these acts, and did not discharge the liability of the United States, except so far as the amount received by the claimants from their grantees as purchase-money might go to reduce the amount of their loss. That it was within the jurisdiction of the commission to review the judgment of the Supreme Court, and if found erroneous to award compensation to the claimants for their losses by occasion of it. Her Majesty's counsel cited *Calvo Derecho Internacional*, vol. 1, c. 9, §§ 206, 292, 797, page 391; *De Felice Droit de Nature et des Gens*, vol. 2, p. 9; *Burlamaqui Droit de Nature et des Gens*, vol. —, p. 3, c. I; Phillimore, vol. 1, § 168; Rutherford, vol. 2, book 2, c. 9, §§ 12, 13, 19; Manning's Law of Nations, 383; Lawrence's Wheaton, 673, 674, 679 to 682; Halleck's Int. Law, §§ 15, 16; Story's Conflict of Laws, §§ 591, 592.

The commission unanimously disallowed the claim.

George H. and James W. B. Money, No. 324. The memorial in this case alleged, in effect, that the claimants were the owners of certain shares in the Bank of Louisiana, at New Orleans, which shares paid large dividends up to the year 1861; that at the close of that year, "in consequence of the war in America between the Northern and Southern States, and of the occupation of New Orleans and of the bank by General Butler, the bank ceased to pay any dividend or bonus," and the claimants have never since been paid any dividends; that at the time of the cessation of the dividends the shares were worth \$31,200, but that since that date they had been substantially valueless. The claimants claimed \$33,720, besides interest. On demurrer by the United States, the claim was unanimously disallowed.

William R. Hodges, No. 354. This claimant, by his memorial, stated seven distinct claims against the United States, upon which he claimed awards to the amount of \$1,474,155, besides interest.

1. For 200 bales of cotton alleged to have been owned by the claimant in July, 1864, at Fort Adams, Mississippi. This cotton was alleged to have been seized by the United States military forces at Fort Adams, in August, 1864, and 178 bales of it sent to New Orleans; the remaining 22 bales he alleged were carried off by the teamsters who fled fearing that their teams, as well as the cotton, would be seized by the United States officers. The cotton brought to New Orleans was, on its arrival, turned over with other cotton by General Canby to B. F. Flanders, a Treasury agent of the United States. The claimant brought suit against Flanders in a Louisiana court to recover the cotton, which suit was afterwards discontinued with other like suits brought by other claimants of cotton against

Flanders, on a stipulation for the delivery of the cotton to the respective claimants, according to their shares, as stipulated between themselves, by which stipulation Hodges was entitled to 122 bales. He claimed damages for the 78 bales which he failed to receive, and for depreciation of price on the 122 bales received by him, and for legal expenses incurred, to the amount of \$106,850, besides interest.

2. The second claim was for "hospital taxes" alleged to have been paid by the claimant to the military authorities at New Orleans under an order of Major-General Banks, then in command there, requiring that all cotton coming to New Orleans should pay a tax of \$5 per bale; sugar, \$1 per hogshead, &c., &c. The claimant alleged that he paid said taxes under protest to the amount of \$20,924, for which amount, with interest, he claimed damages.

3. The third claim was for 1,600 bales of cotton alleged to have been partly destroyed and partly carried off by the military forces of the United States, near Alexandria, La., in March, 1864, for which he claimed \$425,040, besides interest.

4. The fourth claim was for a quantity of cotton near Pearl River, Mississippi, which he alleged was, "by the neglect and inefficiency of the naval and military officers in command of the district, entirely and totally lost to your memorialist," and for which he claimed \$224,600, besides interest.

5. The fifth claim was for a quantity of sugar and molasses, alleged to have been stored by the memorialist in March, 1864, upon Old River, in Point Coupee, Louisiana. The claimant alleged that he sent a vessel in March, 1864, to remove this sugar and molasses, but that the vessel was prevented by the United States gun-boat fleet from landing and taking on board the sugar and molasses, and that in consequence the sugar and molasses "were entirely lost to your memorialist." For this he claimed \$35,175, besides interest.

6. The sixth claim was for a quantity of sugar, alleged to have been purchased in March, 1864, by the claimant, from one Thorne, a resident of Saint Martin's Parish, La., where the sugar was situated. The claimant alleged that he hired a United States transport from the quartermaster of the United States Army, to whom he paid the sum of \$3,000, to bring out the sugar from the plantation, where it was stored, to Brashear City, La., to be thence transported to New Orleans. That 84 hogsheads of the 300 purchased were brought out by said transport to Brashear City, where it was seized by the United States authorities, and libelled in the United States district court, but said libel was dismissed and the sugar surrendered. The United States authorities, however, prohibited the transport which the claimant had hired from returning for the remainder of the sugar; and, in consequence of such refusal, he alleged that the sugar was shortly afterwards destroyed by confederate scouts. For his losses in this regard, he claimed \$81,565, besides interest.

7. The seventh claim was for a large quantity of cotton alleged to have been purchased by the claimant in the States of Louisiana and Mississippi, 1,000 bales of which he alleged to have been destroyed by troops of the United States, and the remainder to have been lost and destroyed through the negligence and default of the United States authorities. Under this claim he claimed an award for \$580,000, besides interest.

During all the transactions in question the claimant was domiciled in New Orleans.

The questions arising in the case were, to a large extent, questions of fact, the recapitulation of which here would be unprofitable. In regard to most of the property set forth in claims 1, 3, 4, 5, 6, and 7, it was contended by the United States that the claimant's title was invalid, as obtained by unlawful purchases from enemies of the United States of property within the enemy's country, in violation of the non-intercourse statutes of the United States, and of the general laws of war. The permits under which most of this property was alleged to have been purchased were also claimed by the United States to have been irregular, collusive, and fraudulent, issued in violation of law, and giving to the claimant no right to trade within the enemy's country.

In regard to the claim for payment of alleged illegal taxes, being the claimant's second claim, it was contended on the part of the United States that the tax was a lawful one, imposed by the commanding officer at New Orleans, while that city was governed solely by martial law, as a condition for the carrying on of trade in that city; and its proceeds properly applied to the relief of the poor of the city, with whose care the military authorities were of necessity charged. That it was a tax imposed upon all persons trading in the city without discrimination, and voluntarily paid by the claimant in common with all other persons in like situation in New Orleans. Various other questions in regard to all the claims were raised and discussed by the respective counsel, but they were mainly such as relate only to the special circumstances of the case and the questions of fact involved in the evidence in relation to them.

The commission made an award in favor of the claimant for \$34,150, Mr. Commissioner Frazer dissenting. I am advised that this award was made entirely in respect of the claimant's first claim above recited, and of the amount paid by the claimant to the United States quartermaster for the use of the transport, as set forth in the sixth claim.

In the case of Peter Maxwell, No. 385, the memorial alleged that the claimant, during the entire war, was a resident of Liverpool. That in the year 1862 proceedings were instituted in the United States court for the district of Kansas for the confiscation of four lots of land situated in the city of Leavenworth, Kans., a State not in rebellion, on the alleged ground that the claimant was a rebel in arms against the United States. The only notice of the proceedings to the defendant

was a constructive notice by publication pursuant to the statute. No appearance being had by the now claimant, a decree of confiscation of two of the lots passed by default. As to the other two, the libel was dismissed.

The proofs before the commission clearly showed that the allegations in the libel as to the claimant being engaged in the rebellion against the United States were unfounded.

The commission made an award in favor of the claimant for \$1,782.

Bailey & Leetham, claimants, No. 386. The claimants were the owners of the British steamship *Labuan*, which, on the 5th of November, 1862, was in the port of New York laden with a cargo of merchandise destined for Matamoras. On that day her master presented the manifest to the proper officer of the custom-house at New York for clearance, but such clearance was refused, and the refusal continued up to the 13th of December, 1862, on which day it was granted. The memorial alleged that this detention was by reason of instructions received by the custom-house officers from the proper authorities of the United States to detain the *Labuan*, in common with other vessels of great speed destined for ports in the Gulf of Mexico, to prevent the transmission of information relative to the departure or proposed departure of a military expedition fitted out by the authority of the said United States. The memorial claimed damages for the detention \$38,000, being at the rate of \$1,000 per day, the memorial alleging that on a former seizure and detention of the same vessel, from February to May, 1862, when libelled as prize, this rate of compensation for the detention had been awarded to the owners by the district court of the United States.

On the part of the United States it was contended that the detention of the *Labuan*, under the circumstances alleged in the memorial, was within the legitimate and recognized powers of the United States; that it was no infringement upon the rules of international law or upon any treaty stipulations between the United States and Great Britain, and that it gave no right of reclamation in favor of the claimants against the United States; that the right of self-protection, by temporarily refusing clearance to vessels through which information of great importance in regard to military movements is likely to reach the enemy, must be regarded as of necessity permissible to a government engaged in war; that at the time of this detention important military movements then in progress in connection with the occupation of New Orleans by the Federal forces, including the dispatch of General Banks, with large re-enforcements, to supersede General Butler in the command there, were in progress, and made it of the utmost importance that these movements should be carefully kept secret from the rebels; that the detention of the *Labuan* was not by any discrimination against her as a British vessel, or against British vessels as such. All vessels capable of such a rate of speed as to make their departure

dangerous in this regard were detained alike. That no claim had ever been made by the British government, through the usual diplomatic channels, upon the United States for compensation; and that it could not be believed that such claim would not have been made if Her Majesty's government had considered such a claim valid. The counsel for the United States cited, in this connection, the letter of Mr. Stuart, Her Majesty's minister at Washington, to Mr. Seward, of 1st August, 1862, (U. S. Dip. Cor., 1862, 1863, part 1, p. 273,) upon a somewhat analogous question, in which Mr. Stuart says:

I have been instructed to state to you that Her Majesty's government, after considering these dispatches, in connection with the law-officers of the Crown, are of opinion that it is competent for the United States, as a belligerent power, to protect itself within its own ports and territory by refusing clearances to vessels laden with contraband of war or other specified articles, as well as to vessels which are believed to be bound to confederate ports. And that so long as such precautions are adopted equally and indifferently in all cases, without reference to the nationality or origin of any particular vessel or goods, they do not afford any just ground of complaint.

The case of the detention of the *Labuan*, it was contended on the part of the United States, was governed by the same principles and justified by the same rules as the cases referred to by Mr. Stuart. The counsel referred to the decision of the commission upon the American claims against Great Britain, growing out of the prohibition of the exportation of saltpetre at Calcutta, (American claims, Nos. 11, 12, 16, 18,) hereinbefore reported, and in which such prohibition was held by the commission not to involve a violation either of international law or of treaty stipulation; and urged that the principles which would sustain the validity of such prohibition must also include such a case as the detention of the *Labuan*.

The counsel for the claimant maintained that the detention of the *Labuan* was in effect a deprivation of the owners of the use of their property for the time of the detention for the public benefit; that it was in effect a taking of private property for public use, always justified by the necessity of the State, but likewise always involving the obligation of compensation. He cited 3d Phillimore, 42, and Dana's *Wheaton*, 152, *n*.

The commission unanimously made an award in favor of the claimant for \$37,392.

In the case of Catharine J. Johnson, executrix, No. 449, the memorial alleged that the claimant's testator was the sole registered owner of the British schooner *James Douglas*, which vessel, while on a voyage from Cuba to New York, met with disaster which led to her being abandoned by the master and crew; that she was subsequently fallen in with by a United States vessel of war, which took her into the port of Beaufort, North Carolina, where she was appropriated to the use of the United States Government; that on application to that Government for her restoration, the Secretary of the Navy gave directions that

the vessel be surrendered to her owner on his renouncing all claims for the use of the vessel by the United States; that, notwithstanding these orders, the vessel had never been restored to her owner, but was still in the port of Beaufort under the control of the officials of the United States. The claimant claimed damages \$7,000, besides interest.

The proofs showed that, after the vessel was brought into port, and before any claim was interposed on behalf of her owner, some use had been made of the vessel by the Navy Department; that the claim of the owner was interposed through the British legation, and that the United States Government at once offered to surrender her on payment of a reasonable salvage to the officers and crew of the vessel which brought her in. Some objection being made to the payment of the salvage asked, the United States Government directed her surrender without salvage, on the claimant's waiving claim for compensation for the use that had been made of her while in port. No objection was made to this condition, and no further claim was ever advanced by any person for the vessel. She remained lying at Beaufort waiting requisition of her owner, and nothing further was ever heard of the matter until the filing of the memorial before the commission.

The commission (Mr. Commissioner Gurney dissenting) made an award in the following words:

We think it does not appear that the United States appropriated the vessel, and we regard it as yet being the claimant's property. The claim is, therefore, disallowed.

All which is respectfully submitted.

ROB: S. HALE,

Agent of the United States, &c.

WASHINGTON, *November 30, 1873.*

APPENDIX.

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A.

Articles of the treaty relating to the commission.

ARTICLE XII.

The high contracting parties agree that all claims on the part of corporations, companies, or private individuals (citizens of the United States) upon the government of Her Britannic Majesty, arising out of acts committed against the person or property of citizens of the United States during the period between the thirtieth of April, eighteen hundred and sixty-one, and the ninth of April, eighteen hundred and sixty-five, inclusive, not being claims growing out of the acts of the vessels referred to in Article I of this treaty, and all claims, with the like exception on the part of corporations, companies, or private individuals, (subjects of Her Britannic Majesty,) upon the Government of the United States, arising out of acts committed against the persons or property of subjects of Her Britannic Majesty during the same period, which may have been presented to either government for its interposition with the other, and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article XIV of this treaty, shall be referred to three commissioners, to be appointed in the following manner, that is to say : One commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly ; and in case the third commissioner shall not have been so named within a period of three months from the date of the exchange of the ratifications of this treaty, then the third

commissioner shall be named by the representative at Washington of His Majesty the King of Spain. In case of the death, absence, or incapacity of any commissioner, or in the event of any commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment; the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The commissioners so named shall meet at Washington at the earliest convenient period after they have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, all such claims as shall be laid before them on the part of the governments of the United States and of Her Britannic Majesty, respectively; and such declaration shall be entered on the record of their proceedings.

ARTICLE XIII.

The commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to them. They shall investigate and decide such claims in such order and in such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the respective governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective governments in support of or in answer to any claim, and to hear, if required, one person on each side on behalf of each government, as counsel or agent for such government, on each and every separate claim. A majority of the commissioners shall be sufficient for an award in each case. The award shall be given upon each claim in writing, and shall be signed by the commissioners assenting to it. It shall be competent for each government to name one person to attend the commissioners as its agent, to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The high contracting parties hereby engage to consider the decisions of the commissioners as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions, without any objection, evasion, or delay whatsoever.

ARTICLE XIV.

Every claim shall be presented to the commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the commissioners, and then, and in any such case, the period for presenting the claim may be extended by them to any time not exceeding three months longer.

The commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the commissioners to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly or to any and what extent, according to the true intent and meaning of this treaty.

ARTICLE XV.

All sums of money which may be awarded by the commissioners on account of any claim shall be paid by the one government to the other,

as the case may be, within twelve months after the date of the final award, without interest and without any deduction, save as specified in Article XVI of this treaty.

ARTICLE XVI.

The commissioners shall keep an accurate record and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each government shall pay its own commissioner and agent or counsel. All other expenses shall be defrayed by the two governments in equal moieties.

The whole expenses of the commission, including contingent expenses, shall be defrayed by a ratable deduction on the amount of the sums awarded by the commissioners, provided always that such deduction shall not exceed the rate of five per cent. on the sums so awarded.

ARTICLE XVII.

The high contracting parties engage to consider the result of the proceedings of this commission as a full, perfect, and final settlement of all such claims as are mentioned in Article XII of this treaty upon either government; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said commission, shall, from and after the conclusion of the proceedings of the said commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

B.

Rules of the commission.

1. In addition to the representation of his claim, and the proofs in support thereof which shall have been presented to his government, the claimant shall file in the office of the commission a statement of his claim, in the form of a memorial, addressed to the commission.

2. Every memorial shall state the full name of the claimant, the place and time of his birth, and the place or places of his residence between the 13th day of April, 1861, and the 9th day of April, 1865, inclusive. If he be a naturalized citizen or subject of the government by which his claim is presented, an authenticated copy of the record of his naturalization shall be appended to the memorial. And the memorial shall also state whether he has been naturalized in any other country than that of his birth; and, if not so naturalized, whether he has taken any, and what, steps toward being so naturalized.

3. If the claim be preferred in behalf of a firm or association of persons other than a corporation or joint-stock company, the names of each person interested, both at the date of the claim accrued and at the date of verifying the memorial, must be stated, with the proportions of each person's interest. And all the particulars above required to be given in the case of individual claimants must be stated in respect of each mem.

ber of such firm or association, unless the same be dispensed with on special order of the commission. If any transfer of the claim, or any part thereof, has occurred, the nature and mode of such transfer must be stated.

4. The memorial must state the particulars of the claim, the general grounds on which it is founded, and the amount claimed. It shall be verified by the oath or affirmation of the claimant; or, in the case hereinafter provided, of his agent or attorney; or if the claim be by a firm or an incorporate association of persons, then by the oath or affirmation of one of them; or in the case of a corporation or joint-stock company, by the oath or affirmation of the president or other officer. Such oaths or affirmations may be taken, if in the United States or Great Britain, before any officer having authority, according to the laws of the place, to administer oaths or affirmations; and they may be taken in the said countries, or elsewhere, before any consul or diplomatic agent of either government. The verification may be by the agent or attorney only when verification by the claimant is substantially impracticable, or can only be given at great inconvenience. And in case of verification by agent or attorney, the cause of the failure of the claimant to verify it shall be stated.

Objection to the jurisdiction of the commission, or to the sufficiency of the case stated in the memorial, may be made in the form of a demurrer, stating, without technical nicety, the substantial ground of the objection. Any new matter, constituting a special ground of defense, may be stated in a plea, which may be the subject of demurrer, and all demurrers may be set for hearing on a ten days' notice.

5. Every claimant shall be allowed two months, after the filing of his memorial, to complete his proofs; and after the completion of his proofs, and notice thereof given, two months shall be allowed for taking proofs for the defense, with such further extension of time, in each case, as the commission, on application, may grant, for cause shown.

After the proofs on the part of the defense shall have been closed, the commission will, when the claimant shall desire to take rebutting proof, accord a reasonable time for the purpose.

6. All depositions after the filing of the memorial shall be taken on notice, specifying the time and place of taking, to be filed in the office of the commission, with a copy of the interrogatories, or a statement in writing by the counsel of the government adducing the witness, showing the subject of the particular examination with sufficient precision to be accepted by the counsel of the government against whom such witness is to be produced, to be signified by his indorsement thereon. Such interrogatories or statement to be filed in the office of the commission at least fifteen days before the day named for the examination, with one additional day for every five hundred miles of distance from Washington to the place where the deposition is to be taken. When depositions are to be taken elsewhere than in North America thirty days will be allowed.

7. Every deposition taken in the United States shall be taken before some officer authorized to take depositions in causes pending in courts of the United States. Depositions in Great Britain and her possessions may be taken before any person authorized to take depositions to be used in courts of record, or any justice of the peace. Depositions in those countries or elsewhere may be taken before any consul or diplomatic agent of either government.

In all cases the cross-examination of the witness may be by written interrogatories, or orally, in the election of the party cross-examining.

8. The commissioners may at any time issue a special commission for the taking of testimony on the application of either party; such testimony to be taken either in written interrogatories or orally, as the commissioners may order.

The commissioners may also, on motion of either party, order any claimant or witness to appear personally before them for examination or cross-examination.

9. When any original papers filed in the State Department of the United States or in the archives of the British legation in Washington cannot be conveniently withdrawn from the files, copies thereof will be received in evidence, when certified by the State Department or by the British legation, as the case may be.

10. When the time has expired for taking proofs, or the case has been closed on both sides, the proofs will be printed under the direction of the secretary, and at the expense of the commission. The argument for the claimant shall be filed within fifteen days after the paper shall have been printed, and the case shall stand for hearing ten days thereafter.

11. The secretary will prepare, from time to time, lists of cases ready for hearing, either upon demurrer or upon the merits, in the order in which they are entitled to be heard, or in which the counsel for the two governments shall agree that they shall be heard.

12. All cases will be submitted on printed arguments, which shall contain a statement of the facts proven and reference to the evidence by which they are proven, and, *in addition*, the counsel for the respective governments will be heard whenever they desire to argue any cause orally. Arguments of counsel for individual claimants will be received, in print, when submitted by the counsel of either government, and not otherwise.

13. Claims against the United States and Great Britain, respectively, will be entered in different dockets kept by the secretary. The dockets shall contain an abstract of all proceedings, motions, and orders in each case.

14. The secretary will keep a record of the proceedings of the commission upon each day of its session, which shall be read at the next meeting, and will then be signed by him and approved by the signature of the presiding commissioner.

15. The secretary will keep a notice-book, in which entries may be made by the counsel for either government, and all entries so made shall be notice to the opposing counsel.

16. The secretary shall provide books of printed forms, in which will be recorded the awards of the commission, signed by the commissioners concurring therein. The awards against each government will be kept in a separate book.

17. A copy of each award, certified by the secretary of the commission, will be furnished, on request, to the party upon whose claim such award shall have been made.

18. The dockets, minutes of proceedings, and records of awards will be kept in duplicate, one of which will be delivered to each government at the close of the duties of the commission.

19. The secretary will have charge of all the books and papers of the commission, and no papers shall be withdrawn from the files or taken from the office without an order of the commission.

C.—Schedule of claims presented to the commission by claimants against the respective governments, with indexes to same.

BRITISH CLAIMS.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
1	Thomas Ward	Cotton used by United States Army...	Mar. 3, 1865	Wilmington, N. C.	.....	\$507 50	.....	Award for \$620 44 Jan. 31, 1872.
2	John H. Hanna	Cotton destroyed by confederates.	May —, 1862	Louisiana and Mississippi.	.....	265, 423 45	.....	Disallowed Dec. 13, 1871.
3	John W. O'Donald..	Furniture destroyed by United States Army.	Sept. 17, 1862	New Creek, W. Va.	.....	250 00	.....	Disallowed Oct. 29, 1872.
4	James Crutcheff.	Use of and damage to real estate and personal property used and destroyed by United States Army.	July 22, 1861	Washington, D. C.	.....	173, 351 02	6 per cent.	Award for \$14, 115 Apr. 9, 1873.
5	Anthony Barclay ..	Damage to real estate.	Dec. 21, 1864	Chatham County, Ga.	\$116, 912 25	275, 335 25	.....	Award for \$18, 575 May 2, 1873.
		Use and destruction of personal property by United States Army.	Dec. 21, 1864	Chatham County, Ga.	102, 500 00		.....	
		With \$13,000 per annum to be added, with interest at 7 per cent. per annum until paid.	.....	.....	55, 923 00		.....	
6	Ernest W. Pratt.	Illegal imprisonment by United States.	Mar. 18, 1865	Jersey City, N. J.	.....	50, 000 00	.....	Award for \$1, 200 Dec. 3, 1872.
7	John C. Rahming.	Illegal imprisonment by United States.	Sept. 2, 1861	{ New York City.	.....	580, 800 00	Gold	Award for \$38, 500 May 6, 1873.
8	Mary S. Hill.	Illegal imprisonment by United States.	Dec. 31, 1863		.....	£2, 000 00	.....	Dismissed without prejudice to file new memorial Nov. 13, 1871. Award signed Aug. 28, 1873.
	(Same case as No. 198.)	Illegal imprisonment by United States.	May —, 1864	New Orleans, La.	.....	.....	.....	Award for \$1, 809 Jan. 7, 1873.
9	William H. Lane.	Use of and damage to real estate by United States Army.	Jan. 7, 1865	Memphis, Tenn.	.....	\$8, 266 66	.....	Disallowed Dec. 16, 1871.
10	William Dunn.	Furniture, &c., destroyed by United States Army.	Apr. 3, 1865	Richmond, Va.	.....	600 00	.....	Award for \$770 Jan. 27, 1873.
11	John J. Unsworth ..	Illegal imprisonment and personal property taken by United States Army.	Dec. 3, 1862	Fairfax County, Va.	.....	2, 539 50	.....	.....
12	Thomas Sterling.	Personal property used and destroyed by United States Army.	Apr. —, 1864	King and Queen County, Va.	.....	6, 270 00	.....	Disallowed Feb. 13, 1872.
13	Alfred R. Walker.	Value of personal property (State bank stock, &c.) destroyed by the war.	.....	Charleston, S. C.	.....	40, 344 51	And interest.	Disallowed Dec. 13, 1871.
14	James O'Keeffe	Cotton taken by United States and sold; net proceeds received through Court of Claims.	Jan. 27, 1865	Savannah, Ga.	.....	5, 391 35	.....	Dismissed for want of jurisdiction, and without prejudice, Nov. 29, 1872.
15	Thomas McDowell.	Destruction of dwelling-house and personal property by United States Army.	Nov. 10, 1864	Atlanta, Ga.	.....	6, 012 50	.....	Award for \$7, 442 Nov. 12, 1872.

16	Peter Johnston	Cotton, cattle, and other personal property used and destroyed by United States Army.	July & Aug., 1862 Oct. & Dec., 1864.	Rappahannock County, Va.	.....	27, 654 74	And interest.	Award for \$8,000 Apr. 23, 1872.
17	A. D. Palmer	Clothing taken by United States Army.	Sept. 17, 1861	Platte City, Mo.	.....	95 50	.....	Disallowed Jan. 31, 1872.
18	Edward A. Barrett	Value of Confederate cotton loan bond No. 499 series C.	—, 1865	Richmond, Va.	.....	£200	£91	Dismissed Dec. 14, 1871.
19	John Kater	Horses, corn, hogs, hay, &c., taken, used, and destroyed by the United States Army.	Aug. —, 1864	Near Kernstown, Va.	.....	\$425 00	.....	Award for \$471 Nov. 12, 1872.
20	Robert H. Montgomery	Sugar molasses, and rum, taken and sold by the United States. Case had been on docket of Court of Claims and United States Supreme Court.	Nov. & Dec., 1862.	Louisiana.	.....	67, 465 00	.....	Disallowed Mar. 26, 1873.
21	John Gummer	Corn, hogs, poultry, saddles, bridles, tools, &c., taken, used, and destroyed by United States Army.	Nov. 21, 1864	Liberty, Miss.	.....	1, 200 00	.....	Disallowed Nov. 12, 1872.
22	Thomas McMahon	Use of and destruction of real estate, by United States Army.	Apr. 9, 1865	Pensacola, Fla.	.....	60, 500 00	.....	Disallowed Oct. 20, 1872.
23	John C. Stovin	Illegal imprisonment by United States Army, loss of profits from business, and loss of personal property.	—, 1861	Cumberland, Md.	.....	380, 704 27	.....	Award for \$8,300 Jan. 15, 1873.
24	James McCabe	Mules, corn, bacon, flour, cattle, clothing, &c., taken by United States Army.	Feb. 9, 1864	Morton, Miss.	.....	1, 236 00	.....	Award for \$150 Nov. 12, 1872.
25	Walter J. Dobbins	Furniture, clothing provisions, &c., burned by United States Army.	Feb. 17, 1865	Columbia, S. C.	.....	2, 263 00	.....	Disallowed Apr. 4, 1872.
26	Anne Murray	Tobacco destroyed by United States Army.	Apr. —, 1865	Farmville, Va.	.....	3, 129 00	Gold and int.	{ Disallowed Nov. 12, 1872.
27	Robert Orrock	Two horses taken by United States Army.	May 4, 1863	Henrico County, Va.	.....	£1, 000	Legal exp's	
28	John Wilkinson	Bed taken and used by the United States Army.	1863 and 1864	Calhoun County, Tex.	.....	525 00	.....	Award for \$782 Apr. 4, 1872.
29	Lacy J. Park, administrator of W. J. Bruce.	Dwelling-house burned and personal property taken, used, and destroyed by United States Army.	—, 1862	Rutherford County, Tenn.	.....	5, 123 50	.....	Disallowed Nov. 12, 1872.
30	Timothy Dowling	Use of and destruction of real estate, furniture, &c., by United States Army.	—, 1864	Violsburgh, Miss.	.....	7, 830 99	Interest.	Award for \$5,038 Nov. 12, 1872.
31	Jonatn Braithwaite.	One horse taken by United States Army.	Aug. 6, 1864	Bullitt County, Ky.	.....	200 00	.....	Award for \$325 Apr. 4, 1872.
32	William E. Scanlan.	Loss on 71 bales of cotton.	Dec. —, 1864	Memphis, Tenn.	.....	51, 150 24	With intert.	Award for \$16,426 Mar. 8, 1873.
33	Brown & Sharp	Loss on 29 bales of cotton burned by rebels.	Dec. —, 1864	Crittenden County, Ark.	.....	£1, 493 6 0	And interest.	Disallowed Sept. 16, 1873.
34	Eleanor W. Turner	78 bales of cotton burned by United States Army.	Feb. —, 1865	Camden, S. C.	.....	\$3, 146 82	.....	Award for \$5,700 Apr. 23, 1872.
35	John P. Rogers	For rent of house and repair of damage thereto by United States Army. Rent of store, damage to goods, and damage to business, as dealer in queensware, &c., by the United States Army.	May 1, 1862	New Orleans, La.	.....	13, 000 00	.....	Disallowed Oct. 29, 1872.
	John P. Rogers		Mar. 1, 1863	Memphis, Tenn.	.....			

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

[illegible]

48	Charles Cleworth...	Damage to dwelling, fences, trees, steam-engine; use and occupation of dwelling, and damage to vault and coffin by United States Army. Lumber taken and used, and destruction of personal effects and damage to real estate by United States Army. Damage to real estate, out-houses, fencing; consumption of vegetables, hay, wood, &c., by United States Army.	1863, 1864, & 1865.	Vicksburg, Miss.	2, 323 33	Disallowed Nov. 12, 1872.
49	James Tongue.....	Illegal imprisonment by United States. Dwelling-house and factory used by the United States Army.	Dec. 11, 12, & 13, 1862.	Fredericksburgh, Va	2, 183 28	Award for \$193 Jan. 7, 1873.
50	Robert Gibson.....	Mules, carts, and harness taken and used by United States Army. Illegal imprisonment.....	Fall, 1864	Near Louisville, Ky.	16, 810 00	Award for \$2,193 Jan. 17, 1873.
51	John I. Shaver.....	Illegal imprisonment by United States. Dwelling-house and factory used by the United States Army.	Oct. —, 1861	Detroit, Mich.	100, 000 00	Award for \$32,204 Mar. 28, 1873.
52	William H. Wisdom	Mules, carts, and harness taken and used by United States Army. Illegal imprisonment.....	During the war.	Pensacola, Fla.	7, 700 00	Award for \$2,186 Dec. 3, 1872.
53	John Burnside.....	Mules, carts, and harness taken and used by United States Army. Illegal imprisonment.....	Dec. 24, 1862	Parish of St. James, La.	11, 700 00	Award for \$13,969 Nov. 12, 1872.
54	Rev. Frederick W. Boyd (a naturalized British subject).	Illegal imprisonment.....	Dec. 16, 1864	Natchez, Miss.	150, 000 00	Dismissed for want of jurisdiction March 22, 1873.
55	Francis Allsop.....	20 cattle, corn, horses, &c., taken and used by United States Army. Tobacco destroyed by United States Army.	Aug. —, 1861	Marion County, Mo.	13, 325 00	Disallowed Nov. 12, 1872.
56	James Fagan.....	Two horses and watch and chain taken by United States Army. Tobacco burned by confederates.	June 8, 1864	Staunton, Va.	13, 706 00	Disallowed Jan. 7, 1873.
57	George Moore.....	Use of farm, damage to horse, fences, trees, and use of vegetables, corn, oats, &c., by United States Army.	Sept. —, 1864	Richmond, Va.	2, 478 33	Disallowed Jan. 31, 1872.
58	John N. Trook, administrator of Wm. Hughes.	Timber taken by United States Army. Cattle taken and used by United States Army.	1861, '62, '63, '64, and '65.	Near Washington, D. C.	16, 649 26	Disallowed November 12, 1872.
59	Crow & Wylie.....	Illegal imprisonment by United States. loss of property, business, and credit.	Nov. 1, 1863	Pensacola, Fla.	189, 481 60	Award for \$21,397 Jan. 31, 1873.
60	Michael Garry.....	Illegal imprisonment, loss by sale of land and horses taken by United States Army.	May 26, 1864	Lafayette Parish, La.	36, 320 00	Award for \$7,560 Nov. 12, 1872.
61	Samuel G. Levey.....	Tobacco and other goods, &c., taken, used, and destroyed by United States Army.	Dec. —, 1861	Boston, Mass.	£20, 000 0 0	Award for \$930 March 6, 1873.
62	Francis Impey.....	Destruction of machinery, material and building; rent, and damage and loss by United States Army.	Oct. —, 1862	Andrew County, Mo.	\$28, 400 00	Award for \$2,490 Nov. 14, 1872.
63	Andrew Brown.....	2 horses taken by United States Army. 1 horse taken by United States Army. Illegal arrest.	Feb. —, 1863	Ripley, Miss.	49, 000 00	Disallowed March 17, 1873.
64	Charles Johnson.....	Destruction of dwelling &c. Money and merchandise taken by United States Army.	Aug. 3, 1863	Bolivar, Tenn.	8, 650 00	Award for \$340 August 8, 1873.
65	Marion D. Murdock.	Gun-carriages, &c., taken by United States Army.	June 27, 1864	New Jackson, La.	63, 400 00	Award for \$1,848 July 28, 1873.
			Oct. 25, 1864	New Orleans, La.		
			Oct. 25, 1864	New Orleans, La.		
66	Robert Davidson.....	Gun-carriages, &c., taken by United States Army.	April 3, 1863	New Orleans, La.	14, 422 00	Disallowed November 14, 1872.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
67	Pierre Dausereau	Sailing and flat boat burned by United States Army. 2 horses taken by United States Army. Run destroyed by United States Army. Cotton taken and sold by United States Army. Loss of crop on plantation, &c.	Oct. 27, 1862 April and May, 1863. April and May, 1863. May 14, 1863	Parish of Assump- tion, La. Parish of Assump- tion, La. Parish of Assump- tion, La. Parish of Assump- tion, La. Parish of Assump- tion, La. Jackson, Miss.	\$230 00 375 00 1,350 78 48,070 75 50,000 00	\$100,016 53	.....	Disallowed November 26, 1872.
68	James K. Hughes	Flour, sugar, bacon, molasses, tobacco, wearing apparel, &c., taken and used by United States Army. Cotton seized and sold by United States. Claim pending in Court of Claims.	Aug. —, 1864	Clinton, La.	.....	14,314 00	Gold and interest.	Award for \$2,240 Feb. 10, 1873.
69	Mary C. Cleveland	Cotton seized and sold by United States. Claim pending in Court of Claims.	Aug. —, 1864	Clinton, La.	.....	452,812 50	Interest at 6 per cent.	Dismissed for want of jurisdiction, without prejudice to the prosecution of the claim elsewhere, January 20, 1873.
70	Harriet A. Mills	Cotton seized and sold by United States. Claim pending in Court of Claims.	Aug. —, 1864	Clinton, La.	.....	78,750 00	And interest	Dismissed for want of jurisdiction, without prejudice to the prosecution of the claim elsewhere, January 20, 1873.
71	James Stott	Illegal arrest by United States.	Sept. 2, 1863	Dexter, Me.	.....	500 00	.....	Award for \$775 Nov. 14, 1872.
72	William Adam	Railway stock	July —, 1862	United States	.....	3,309 62	.....	Disallowed February 6, 1872.
73	Henry Holt	Woolen factory, stock, and fixtures destroyed by the United States Army. Corn, hay, cattle, bacon, &c., taken and used by United States Army.	July —, 1862 1862, 1863, and 1864.	Waterloo, Va.	.....	47,564 58	.....	Disallowed December 4, 1872.
74	Martha A. Rayne, administratrix of Robert Parker Rayne.	Cotton seized by United States Army; part of claim on Court of Claims docket.	May 2, 1863	Parish of Saint Landry, La.	.....	68,280 30	And interest	Court of Claims case withdrawn November 30, 1872, and rest of claim disallowed August 14, 1873.
75	William Moore	Furniture, clothing, and provisions taken and used by United States Army.	July 11, 1863	Jackson, Miss.	.....	1,000 00	.....	Award for \$240 February 19, 1873.
76	John Manwaring	Starch, 1 horse, bacon, &c., taken, used and destroyed by United States Army; and damage to and suspension of business.	July 6, 1864	Roswell, Ga.	.....	62,775 00	.....	Award for \$879 June 12, 1873.
77	John Gaughen	Illegal imprisonment by United States.	May 2, 1863	Westminster, Md.	.....	1,500 00	.....	Award for \$320 July 25, 1873.
78	Aaron Nowberry	Destruction of dwelling and out-houses, fences and orchards, and taking and using cows, hogs, hay, &c., by United States Army.	Oct. 10, 1863	Near Chattanooga, Tenn.	.....	3,486 00	.....	Award for \$332 January 17, 1873.

79	John I. Crawford	Illegal imprisonment by United States.	May 10, 1864	City of New York	.....	500,000 00	.....	Disallowed January 7, 1873.
80	Honora Macouchy	One horse, corn, fodder, watches, &c., taken by United States Army.	Feb. —, 1865	Bastrop, La.	.....	2,020 00	.....	Disallowed January 20, 1873.
81	Patrick Eagan, administrator of William Donnelly.	Cotton taken and sold by United States; whiskey and rum taken and used by United States Army. Cotton claim was on docket Court of Claims.	Mar. 7, 1865	Wilmington, N. C.	.....	174,304 00	And interest	Award for \$9,334 April 28, 1873; claim as to cotton dismissed without prejudice.
82	William M. Grant	Lumber taken and used by United States Army, and damage to business.	Jan. 7, 1865	New Orleans, La.	.....	5,000 00	.....	Award for \$1,440 December 10, 1872, and \$25 more January 15, 1873.
83	William Irwin	Hay, corn, wheat, oats, &c., taken and used by United States Army, and damage to barn, orchard and stable.	Nov. —, 1862	Stafford County, Va.	.....	1,953 25	.....	Disallowed November 26, 1872.
84	Jacob T. Moore	Five mules taken by United States Army.	July 8, 1863 Nov. 17, 1864	East Feliciana, La.	.....	900 00	.....	Disallowed October 29, 1872.
85	John Carmody	Illegal imprisonment by United States.	Mar. 1, 1865	New Orleans, La.	.....	100,000 00	.....	Award for \$500 November 20, 1872.
86	Ellen Stewart	Destruction of house, fencing and cistern, and loss of rent, by United States Army.	Sept. 10, 1863	Carrollton, La.	.....	3,000 00	.....	Disallowed November 25, 1872.
87	Thomas L. Deacon	Dwelling-house and store, stock of goods, tools, and fixtures, taken, used and damaged by United States Army.	Nov. 19, 1864	Liberty, Miss.	.....	9,409 00	Interest at 6 per cent.	Disallowed March 3, 1873.
88	Thomas Pringle	Corn, bacon, tobacco, horses, furniture, &c., taken, used and destroyed by United States Army.	Mar. 1863, & Apr., 1863	Prince William County, Va.	.....	1,261 00	And interest.	Award for \$558 January 15, 1873.
89	John W. Carmalt	48 bales of cotton, taken and sold by United States.	Feb. 18, 1864	Charleston, S. C.	13,811 42	74,858 42	.....	Disallowed September 17, 1873.
		125 bales of cotton, burned by United States Army.	Feb. 18, 1865	Orangeburgh, S. C.	51,425 00			
		Lined-oil, seized and used by United States.	June 5, 1861	Charleston Harbor, S. C.	9,632 00			
90	John Perry	Received net proceeds of cotton seized through Court of Claims.	June 1, 1864	Ashland, Va.	.....	6,805 00	.....	Disallowed November 26, 1872.
91	Thomas Fraser	Furniture, tobacco, Virginia bank-notes, &c., destroyed by United States Army.	Apr. 1, 1865	Selma, Ala.	.....	29,537 20	.....	Disallowed January 7, 1873.
92	John W. Sharpe	Cotton burned by United States Army. Mules, horses, cattle, and wood taken and used, and damage to dwelling-house, &c., by United States Army.	1863	Rodney, Miss.	.....	64,401 00	.....	Award for \$3,331 February 20, 1873.
93	Andrew Peacock	Cotton burned by United States Army. Illegal imprisonment by United States.	June —, 1861 June —, 1863	Nashville, Tenn. Nashville, Tenn.	100,000 00 11,430 00	123,920 00	And interest.	Award for \$2,035 March 10, 1873.
		Horses, mules, corn, &c., taken by United States Army.	1864	Louisville, Ky.	12,500 00			
94	James and Sarah P. Cumming.	Horses taken by United States Army. Cotton, mules, horses, &c., taken by United States. Buildings, furniture, &c., burned by United States Army.	May —, 1864	Near Alexandria, La.	.....	83,588 00	And interest.	Award for \$19,781 July 16, 1873.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
95	Thos. M. Stewart	1 horse and 3 mules, wood, hay, and oats, taken and used by United States Army, and nursery destroyed.	—, 1862	Near Memphis, Tenn.	.....	\$29,320 00	.....	Award for \$2,400 November 29, 1872.
96	Andrew L. Johnston.	Horses, cattle, &c., taken by Missouri State militia.	1862, 1863, & 1864	Clarke County, Mo.	.....	975 00	.....	Award for \$420 November 29, 1872.
97	Wm. Patrick.	Illegal imprisonment by United States Army.	Aug. 23, 1861	New York City	.....	100,000 00	.....	Award for \$5,160 February 5, 1873.
98	Abram B. Seelye.	Sugar taken and used by United States Army.	Nov. —, 1862	Parish of Terrebonne, La.	.....	3,360 00	.....	Disallowed March 6, 1873.
99	Samuel Brook.	Tarpaulings taken by United States Army.	June —, 1862	Memphis, Tenn.	.....	3,450 00	.....	Award for \$5,451 January 15, 1873.
100	Lizzie Hayes and Sallie Bonn.	Millinery goods taken, used, and destroyed by United States Army.	May —, 1863	Jackson, Miss.	.....	11,989 20	.....	Disallowed April 1, 1873.
101	Isaac D. Parkinson.	Illegal imprisonment by United States Army. Fencing and crop destroyed by United States Army.	July 2, 1864	Hernando Co., Fla.	\$1,500 00 1,200 00	2,700 00	.....	Award for \$235 January 17, 1873.
102	Wm. B. McClure.	Damage to and destruction of property by United States Army, and vegetables taken and used.	1861, 1862, & 1863.	Fairfax County, Va.	260 00	764 23	.....	Award for \$156 January 17, 1873.
103	Wood & Heyworth.	220 bales of cotton burned by United States Army.	Feb. 17, 1865	Columbia, S. C.	50,335 00	279,160 30	And int. at 7 per cent.	Claim for loss on cotton seized withdrawn August 23, 1873, and rest of claim disallowed September 16, 1873.
		895 bales of cotton burned by United States Army.	Feb. 25, 1865	Columbia, S. C.	119,957 00			
		220 bales of cotton burned by United States Army.	Mar. 17, 1865	Columbia, S. C.	53,747 50			
104	Joseph J. Bevirt.	Loss on cotton seized by United States Army.	After April 9, 1865.	.....	56,119 80	21,000 00 \$5,134 65	.....	Disallowed December 3, 1872. Disallowed February 20, 1873.
105	Alexander Nicol.	Illegal imprisonment by United States Army. Store sacked and goods destroyed by United States Army.	Apr. 27, 1863 Dec. 14, 1862	Piney Point, Md. Kinston, N. C.	.....		.....	
106	Ebenezer Barnes.	Occupation of house and lots and damage to coal-boats by United States Army.	1861 and 1862	Charleston, Va.	.....	825 50	.....	Award for \$950 January 27, 1873.
107	Samuel H. Haddon.	Cotton burned by United States Army. Cotton seized by United States Army, and claim on docket of Ct of Claims.	Nov. —, 1864	Scriven County, Ga. Savannah, Ga.	69,837 00 5,322 00	75,159 00	.....	Disallowed September 17, 1873.
108	Hugh O'Donnell.	Sugar and molasses destroyed by United States Army.	—, 1863	Parish of Avoyelles, La.	49,000 00	57,100 00	.....	Disallowed January 7, 1873.
		Sugar destroyed by the United States Army.	—, 1863	Warren County, Miss.	8,100 00		.....	
109	Chas. M. Smith. (Same case as 212.)	School broken up; books, maps, &c., destroyed; horse, &c., taken by United States Army.	1862 and 1863	Athens, Ala.	.....	11,771 00	.....	Dismissed March 20, 1872. Award signed August 23, 1873.

110	Chas. Mander	Flour taken and used by United States Army.	July 20, 1862	Near Fredericksburgh, Va.	.....	.....	2, 150 00	And interest.	Disallowed December 3, 1872.
111	Bernard alias Chas. B. Slater.	Illegal imprisonment and money taken from him by United States Army.	Mar. —, 1863	Louisville, Ky. ....	.....	.....	966 00	.....	Disallowed January 7, 1873.
112	Andrew Brown	Cotton taken and used by United States Army.	— —, 1863	Pontotoc, Miss. ....	.....	.....	.....	.....	.....
		Tobacco, cotton, horse, taken, used, and destroyed by United States Army.	— —, 1864	Okalona, Miss. ....	.....	.....	5, 024 00	.....	Award for \$1,380 Mar. 17, 1873.
113	John B. Harris	Sugar taken by United States Army.	Sept. 5, 1863	Vicksburgh, Miss. ....	.....	.....	12, 750 00	.....	Award for \$15,091 Aug. 27, 1873.
114	William Anderson	Illegal imprisonment by United States. Horses, cattle, corn, hay, &c., taken, used, and destroyed by United States Army.	1862, 1863, 1865	Fauquier Co., Va. ....	.....	.....	2, 109 93	.....	Award for \$1,458, Jan. 27, 1873.
115	James Walford	Illegal imprisonment by United States. Corn, hay, oats, mules, horse, &c., taken, used, and destroyed by United States Army.	Sept. —, 1862	Nashville, Tenn. ....	.....	.....	15, 000 00	.....	Award for \$500 Dec. 4, 1872.
116	Joseph Gribble	Became a naturalized United States citizen September 19, 1872.	Oct. —, 1864	Moniteau Co., Mo. ....	.....	.....	2, 662 30	.....	Disallowed Dec. 10, 1872.
117	John P. Lonnegan	Illegal imprisonment by United States. One mule, hogs, cow and calf, bacon, &c., taken and used by United States.	Apr. 13, 1863 Apr. 13, 1863	Jackson, Miss. Jackson, Miss.	1, 709 00 665 40	.....	2, 365 40	.....	Disallowed January 13, 1873.
118	Robert Eakin	Dwelling and out-houses, corn, fodder, and cotton burned by United States Army.	Jan. —, 1864	Carroll Co., Miss. ....	.....	.....	18, 500 00	\$8, 880 00	Disallowed February 20, 1873.
119	James M. Beattie	23 bales of cotton burned by United States Army.	Feb. 27, 1865	Lancaster District, S. C.	8, 124 00	.....	.....	{ 3, 412 00	.....
		62 bales of cotton burned by United States Army.	Feb. 26, 1865	Lancaster District, S. C.	3, 532 40	.....	16, 656 40	{ 1, 236 34	Disallowed April 1, 1873.
		Loss of salt-works and machinery ; peril of life, &c., by United States Army.	.....	.....	5, 000 00	.....	.....	.....	.....
120	John W. Kennedy	Horses, hay, tobacco, wine, lignors, &c., taken and used by United States Army; loss of business, &c.	June —, 1862	Martinsburgh, Va. ....	.....	.....	8, 413 00	And interest.	Award for \$971 Jan. 7, 1873.
121	Richard W. Inman	Flour, sugar, tobacco, wine, lignors, &c., taken and used by United States Army, and destruction of his business.	Sept. 13, 1862	Charleston, Va. ....	.....	.....	2, 395 90	.....	Disallowed January 7, 1873.
122	William Golding	Patterson iron-works, machinery, and tools taken by United States.	— —, 1864	New Orleans, La.	49, 112 00	.....	.....	.....	.....
		Damage on special contracts.	.....	.....	5, 000 00	.....	104, 112 00	.....	Award for \$1,700 Feb. 24, 1873.
		Damage to general business for eleven months.	.....	.....	55, 000 00	.....	.....	.....	.....
123	John Hill	Dwelling-house and saw-mill, lumber, iron, coal, ferry-boat, cattle, household furniture, taken, used, and destroyed by United States Army.	— —, 1862	Baton Rouge, La.	Less \$4,200 paid.	.....	107, 499 61	8 per cent. ...	Award for \$10,009 Apr. 3, 1873.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
124	John B. Harris.....	Rent of dwelling-house and buildings used by United States Army. Destruction of orchard by United States Army.	Aug. 1, 1863	Near Vicksburg, Miss.	\$2,100 00	\$14,888 00	.....	Award for \$851 Aug. 30, 1873.
		Destruction of fence by United States Army.	.....	.....	500 00		.....	
		27 bales of cotton seized by United States Army.	.....	.....	750 00		.....	
125	Martin Kehoe.....	Horses, cows, hogs, corn, flour, &c., taken, used, and destroyed by United States Army.	Apr. —, 1863	Bealeton, Va.	11,538 00	1,024 00	.....	Award for \$227 Jan. 27, 1873.
126	Joseph Encas.....	Illegal imprisonment by United States.	Dec. 31, 1863	New York City.	.....	720,000 00	Gold.	Award for \$1,540 May 6, 1873. Disallowed March 8, 1873.
127	Thomas Barry..... (Claimant died, and case was revived in the name of Rod- erick Seal, admin- istrator.)	Illegal imprisonment by United States.	Mar. 15, 1864	New Orleans, La.	.....	50,000 00	8 per cent.	
128	Charles Black.....	Sugar and merchandise taken, used, and destroyed by United States Army.	Dec. 25, 1862	Delhi, La.	.....	18,359 00	\$11,703 48 (Gold.)	Disallowed December 16, 1872.
129	William Lowe.....	Sugar taken and used by United States Army.	July —, 1864	Jackson, Miss.	.....	13,500 00	.....	Disallowed February 26, 1873.
130	Heirs of Ellen Burke	Destruction of dwellings, stables, &c., corn, horses, &c., taken, used, and destroyed by United States Army.	Apr. 20, 1863	New Iberia, La.	.....	6,630 00	.....	Award for \$1,828.56 June 4, 1873.
131	Bridget Lavell.....	Household furniture, &c., taken, used, and destroyed by United States Army.	Dec. 22, 1864	Savannah, Ga.	.....	6,223 00	7 per cent.	Award for \$250 April 10, 1873.
132	Michael Grace.....	Tobacco, rice, flour, &c., taken and used by United States Army.	Dec. 21, 1864	Savannah, Ga.	.....	725 00	7 per cent.	Disallowed January 20, 1873.
133	Elizabeth Bostock..	Dwelling and out-houses, fencing, orchard, &c., destroyed by United States Army.	Dec. 9, 1864	Chatham Co., Ga.	.....	3,450 00	7 per cent.	Disallowed April 10, 1873.
134	Henry Glover.....	Horses, beds, blankets, corn, &c., taken and used by United States Army, and illegal imprisonment by United States.	Nov. 19, 1864	Clinton, Ga.	.....	2,075 00	7 per cent.	Disallowed December 3, 1872.
135	Anne O'Hara.....	Horses, mules, corn, wood, &c., household furniture, vegetables, &c., taken and used by United States Army.	Dec. 20, 1864	Near Savannah, Ga.	.....	3,110 75	7 per cent.	Award for \$750 April 10, 1873.
136	Thomas McMahon..	Horse, cows, hay, groceries, &c., taken and used by United States Army.	Dec. 22, 1864	Savannah, Ga.	.....	546 00	7 per cent.	Disallowed April 10, 1873.

137	William H. Bennett	Cotton, corn, horses, cattle, mules, &c., taken, used, and destroyed by United States Army.	Dec. —, 1864	Near Savannah, Ga.	.....	15, 437 00	7 per cent....	Award for \$4,020 May 8, 1873.
138	Heirs of John Purvis	Beacon, lard, sugar, horses, mules, cattle, hogs, corn, &c., taken and used by United States Army.	1863 and 1864	Warren Co., Miss.	42, 176 25			
		Dwellings and out-houses, cotton, and blacksmiths' tools, &c., destroyed by United States Army.	.....	.....	11, 965 00	54, 141 25	.....	Award for \$27,053 December 1 st , 1872.
139	Administrators of James Syme.	Illegal imprisonment by United States Army; illegal imprisonment by United States Army; illegal imprisonment by United States Army; illegal imprisonment by United States Army.	Aug. 28, 1862	New Orleans, La.	100, 000 00 166, 925 00	416, 925 00	75, 116 02	Award for \$116,200 September 22, 1873.
140	Eliza B. Nelson..... (Later Isaac B. Cornwall and Eliza B. Cornwall.)	Damage to business..... Use, occupation, and damage to real estate by United States Army.	.....	.....	150, 000 00			
141	Jeremiah O'Neal.....	Damage by loss of school.....	July 15, 1862	Helena, Ark.	5, 003 00	7, 500 00	And interest.	Award for \$2,765 July 1, 1873.
142	Wm. K. Prior..... Administrator of John Prior.	Horse, mule, corn, vegetables, sugar, &c., taken and used by United States Army.	May 24, 1863	Parish of Point Coupee, La.	2, 721 00	27, 721 00	And interest.	Disallowed December 3, 1872.
143	William B. Booth.....	Store goods, &c., taken and used by United States Army.	June 7, 1863	Jackson, La.	25, 000 00	14, 964 25	And interest.	Award for \$2, 987 July 23, 1873.
144	James Barron.....	Cattle, hogs, wood, timber cut, bricks, &c., taken and used by United States Army; illegal imprisonment by United States; damage to practice, &c.	1862, 1863, and 1864.	Parish of Plaquemine, La.	.....	139, 880 00	.....	Award for \$24, 900 Sept. 22, 1873.
145	Henry St. John.....	Cotton burned by United States Army.	.....	Near Alexandria, La.	86, 904 00 90, 000 00 14, 725 00	131, 629 00	{ And int. 40, 844 08 6, 920 75 }	{ Award for \$7, 614 Aug. 19 1873.
146	Andrew Robin.....	Horses, mules, corn, &c., taken by United States Army.	April —, 1864	Alexandria, La.	10, 000 00 25, 000 00	75, 600 00	And interest.	Award for \$6, 804 Sept. 1, 1873.
		Illegal imprisonment by United States Army.	.....	.....	38, 000 00 12, 600 00			
		Stock of drugs, fixtures, &c., destroyed by United States Army.	.....	.....	2, 653 00	3, 873 00	And interest.	Award for \$377 Jan. 27, 1873.
		Loss in business, &c.	May 20, 1864	Cartersville, Ga.	1, 240 00			
147	Samuel N. Ryerson, <i>et al.</i>	Cotton taken by United States Army. One cow, hogs, tools, furniture, &c., taken, used, and destroyed by United States Army.	.....	.....	.....	9, 207 69	And interest.	Disallowed Nov. 14, 1872.
148	John J. Hennagan.....	Occupation and damage to dwelling-house and lot, by United States Army.	.....	Off Cape Fear River, N. C.	.....	14, 930 00	.....	Disallowed Sept. 17, 1873.
		Brig Napier and cargo, seized and sold by United States. No appeal to Supreme Court.	.....	.....	.....			
		Cotton burned by United States Army.	April —, 1865	Sumpter, S. C.	13, 330 00			
		do	April —, 1865	Maysville, S. C.	1, 000 00			

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of
149	Wm. P. Henry	Four mules, cow and calf, fencing, &c., taken and used by United States Army.	May —, 1863	Vicksburgh, Miss.	\$1,170 00	\$6,170 00	.....	Disallowed Jan. 13, 1873.
150	Daniel G. Neames	Illegal imprisonment by United States. Wine, whisky, furniture, fowls, &c., taken, used, and destroyed by United States Army.	July 29, 1862	Parish of Ascension, La.	5,000 00 230 00	.....	.....	.....
		Sugar, molasses, &c., seized by United States Army.	Dec. 1, 1862	.....	1,020 00	11,450 00	\$1,019 19	Award for \$63 Mar. 1, 1873.
		One horse taken by United States Army.	— —, 1864	.....	200 00	.....	.....	.....
151	A. Kernahan	Illegal imprisonment by United States. Money, tobacco, and brandy, seized by United States Army.	— —, 1862	New Orleans, La.	10,000 00	8,977 35	.....	Disallowed Dec. 7, 1872.
152	Thomas Ryan	Abduction of son	— —, 1861	Charleston, Va.	1,000 00 500 00	1,500 00	.....	Disallowed Jan. 7, 1873.
153	Charles Daly	Illegal imprisonment by United States. Dwelling-house destroyed by United States Army.	July —, 1863	Paducah, Ky.	2,500 00	.....	.....	.....
		Furniture, clothing, &c., taken by United States Army.	July —, 1865	.....	1,025 00	4,525 00	1,480 05	Disallowed June 23, 1873.
		Damage by loss of house by United States Army.	.....	.....	1,000 00	.....	.....	.....
154	Joseph W. Roach	Brigantine Madeira run into and sunk by United States steamer Clyde.	— —, 1863	.....	.....	11,373 98	And interest.	Award for \$14,081 Dec. 12, 1872.
155	Anna C. Grogan, executrix of Pat'k R. Grogan.	Goods taken, used, and destroyed by United States Army.	Apr. 17, 1864	Maries County, Mo.	.....	7,974 26	.....	Disallowed Dec. 3, 1872.
156	John H. Smith	Illegal imprisonment, and horse taken by United States Army.	Aug. —, 1862	Bowling Green, Ky.	.....	\$500 0 0	.....	Disallowed Feb. 21, 1873.
157	William S. Millar	Loss on cotton seized by United States.	Sept. 25, 1864	New Orleans, La.	.....	\$80,145 69	And interest	Disallowed Dec. 12, 1872.
158	Ann Hayes, wife of a United States citizen.	Dwelling-house and furniture destroyed by United States Army.	July 13, 1863	Vicksburgh, Miss.	.....	2,160 00	And interest	Dismissed for want of jurisdiction, and without prejudice, Feb. 7, 1873.
159	Edward J. Bennett, alias Arto Croget.	Illegal imprisonment by United States; money, clothing, &c., taken from him by United States.	Aug. 18, 1864	New York City	.....	3,275 00	.....	Award for \$616 Jan. 17, 1873.
160	Alice and Ellen Duffy.	Cotton, horses, mules, cattle, &c., taken and used by United States Army.	— —, 1863	Parish of St. Landry.	.....	4,624 23	.....	Award for \$320 Dec. 12, 1872.
161	Charles Green	Cotton seized and sold by United States. Claim pending in Court of Claims.	Dec. 24, 1864	Savannah, Ga.	.....	\$30,558 61	.....	Dismissed for want of jurisdiction and without prejudice, Dec. 3, 1872.

162	Godfrey Barnesley...	Horses, cattle, hay, corn, potatoes, poultry, furniture, &c., taken, used, and destroyed, by United States Army.	May 17, 1863	Bartow County, Ga.	.....	6,619 00	Gold.....	Award for \$473 April 2, 1873.
163	Henry S. Jacobs....	Furniture and library burned by United States Army.	Feb. 17, 1865	Columbia, S. C.	.....	5,165 00	And interest	Disallowed Sept. 12, 1873.
164	Percy M. Quillen....	Illegal imprisonment by United States.	July 1, 1861	Washington, D. C.	.....	50,000 00	.....	Disallowed Jan. 23, 1873.
165	Elizabeth S. Thoms, administratrix of David Thoms.	Use of house, use of and damage to furniture and household goods by United States Army.	Jan. —, 1864	New Orleans.	7,869 00	37,800 00	.....	Disallowed April 2, 1873.
166	Richard Henry, otherwise Richard Enstice.	Illegal imprisonment by United States for loss of wages and expenses incurred by seizure of brig Dolphin by United States steamer Wachusett, and loss of clothing, nautical instruments, &c.	Jan. 5, 1863	Off coast St. Thomas	30,000 00	£1,807 0 0	.....	Disallowed Dec. 18, 1872.
167	Nehemiah K. Clements.	Seizure and detention of cargo of Isabella Thompson by United States steamer United States.	June 19, 1863	Near Halifax, N. S.	.....	\$40,000 00	\$23,500	Disallowed Feb. 10, 1873.
168	James McDaniel....	Seizure and detention of brigantine Isabella Thompson by United States steamer United States.	June 19, 1863	Near Halifax, N. S.	.....	5,183 09	2,617	Disallowed Feb. 10, 1873.
169	William Hainsberry	Mules, clothing, &c., taken and used by United States Army.	May 14, 1863	Jackson, Miss.	.....	2,940 00	And interest	Disallowed Feb. 24, 1873.
170	David J. Browne....	19 mules and 1 horse taken by United States Army.	July —, 1864	Jackson, Miss.	.....	5,000 00	And interest	Award for \$4,650 Sept. 24, 1873.
171	John Pierson.....	Tan-bark, burned by United States Army.	July —, 1864	Near Atlanta, Ga.	.....	2,000 00	Gold.....	Disallowed Dec. 16, 1872.
172	Charles Mayhew....	Lot of tools destroyed by United States Army, and loss in business.	After Apr. 9, 1865.	Guilford County, N. C.	.....	4,560 00	And interest	Dismissed for want of jurisdiction Oct. 3, 1872.
173	John McCann.....	Illegal imprisonment by United States	Sept. 20, 1863	Luzerne County, Pa.	.....	3,329 40	.....	Award for \$3,000 Mar. 26, 1873.
174	William J. Burton....	Dwelling-house, fence, and furniture, destroyed by United States Army.	Sept. —, 1863	Iuka, Miss.	.....	1,800 00	.....	Award for \$800 Feb. 11, 1873.
175	Elizabeth Knowles.	Cotton seized by United States Army.	Apr. 4, 1865	Charleston, S. C.	.....	2,422 74	And interest	Award for \$2,612 Aug. 4, 1873.
176	Oliver C. Hayward.	Illegal imprisonment by United States and horse, &c., taken by United States Army.	Feb. 22, 1862	Fort Yuma, Cal.	.....	10,000 00	.....	Award for \$1,000 June 30, 1872.
177	John Medcalf.....	Cotton seized and sold by United States	Nov. —, 1863	Giles County, Tenn.	.....	15,068 35	.....	Award for \$12,903 Apr. 10, 1873.
178	Robert M. Carson....	Seizure of brig Ariel and cargo, captured by United States steamer Gensbok, and sold by United States.	— —, 1861	Off Wilmington, N. C.	.....	\$800 0 0	\$490	Disallowed Nov. 18, 1872.
179	Conway Bell.....	No appeal to Supreme Court.	Feb. 25, 1865	Camden, S. C.	.....	\$8,710 00	And interest	Disallowed Sept. 16, 1873.
180	Jane L. Brand, widow of a United States citizen.	Cotton, warehouse, &c., burned by United States Army.	— —, 1862	New Orleans, La.	.....	100,000 00	.....	Dismissed without prejudice to the prosecution of the claim elsewhere, June 20, 1873.
181	Samuel Patton.....	Illegal imprisonment and expulsion by United States; furniture and clothing used and destroyed by United States Army.	Sept. 11, 1864	Fish River, Ala.	.....	1,409 00	.....	Award for \$187 March 31, 1873.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
182	James Marchée.....	Vegetables, fruits, hay, one horse, &c., taken and used by United States Army.	1861, 1862, 1863, 1864, and 1865.	Alexandria County, Va.	.....	\$2,005 00	.....	Award for \$643 Nov. 14, 1872.
183	Norton Marshall, executor of James Gennill.	Flour taken and used by United States Army.	May —, 1862	Fredericksburgh, Va.	.....	10,000 00	\$5,850	Disallowed Jan. 28, 1873.
184	Martha M. Tooraen, widow of a United States citizen.	Dwelling and out-houses, furniture, clothing, and stock of goods, warehouse and fixtures burned by United States Navy.	1862, 1863 and 1864.	Parish of West Feliciana, La.	\$22,000 00	.....	.....	.....
		Horses, cows, and coal taken, used, and destroyed by United States Army.	.....	.....	712 50	27,212 50	6 per ct. int.	Dismissed for want of jurisdiction March 31, 1873.
		Carriage-factory and blacksmith-shop, destroyed by United States Army.	.....	.....	4,500 00	.....	.....	.....
185	Joseph Welch.....	Corn, horses, fodder, bacon, molasses, cattle, sheep, hogs &c., taken and used by United States Army.	Apr. —, 1864	Natchitoches, La.	.....	3,860 00	6 per ct. int.	Award for \$2,652 June 12, 1873.
186	Eliza J. Jay, administratrix of James Jay.	Lumber taken and used by United States Army.	Nov. —, 1862	Parish of Saint Tammany, La.	.....	875 00	6 per ct. int.	Award for \$1,050 Dec. 10, 1872.
187	James Orr <i>et al</i>	Hogs, sheep, horses, mules, poultry, corn, hay, cedar rails, &c., taken and destroyed by United States Army.	Apr. —, 1862	Maury County, Tenn.	4,053 75	.....	.....	.....
		Occupation of land, damage to dwelling and out-houses, &c., by United States Army.	.....	.....	1,831 50	5,885 25	.....	Disallowed Jan. 23, 1873.
188	Eliza Knighton.....	Furniture, &c., burned by United States Army.	Feb. —, 1865	Blackville, S. C.	.....	8,997 00	And interest	Disallowed Sept. 17, 1873.
189	Thomas Leach.....	Horses, mules, cattle, sheep, poultry, bacon, corn, rice, furniture, &c., taken, used, and destroyed by United States Army.	— —, 1865	Christ Church Parish, S. C.	11,657 90	.....	.....	.....
		Loss of crops on farm, two and a half years.	.....	.....	5,000 00	16,657 90	And interest	Awarded for \$3,842 Sept. 24, 1873.
190	Charles D. Bateman.	Furniture, books, and provisions burned by United States Army.	Feb. 17, 1865	Columbia, S. C.	.....	800 00	.....	Disallowed Sept. 12, 1873.
191	Thomas S. Maben, administrator of Stephen McLean.	Cotton, cattle, hogs, 1 mule taken and used by United States Army.	1862, 1863, & 1864.	Parish of Carroll, La.	9,599 00	17,483 00	.....	No British beneficiary proved, and disallowed Sept. 24, 1873.
		Dwelling-house, furniture, clothing, &c., burned by United States Army.	.....	.....	7,884 00	.....	.....	.....
192	Thomas Riley.....	Illegal imprisonment by United States Army.	Nov. 7, 1863	Scranton, Pa.	.....	953 00	And interest.	Award for \$800 Feb. 19, 1873.
193	William Keith.....	Cotton burned by United States Army.	July 22, 1864	Covington, Ga.	.....	25,000 00	.....	Disallowed Sept. 17, 1873.

194	William G. Smith	Photographic building, fixtures, &c., used and destroyed by United States Army.	Nov. 25, 1862	County of Philadelphia, Pa.	673 00	2, 773 00	And interest.	Disallowed Jan. 31, 1873.
195	John Murta	Loss and damage to his business. Illegal imprisonment by the United States.	Nov. 15, 1863	Luzerne County, Pa.	2, 100 00	7, 566 10		Award for \$1,200 Mar. 20, 1873.
196	William Cogan	Illegal imprisonment by United States.	Feb. 26, 1862	Alexandria, Va.		26, 500 00		Award for \$840 Dec. 14, 1872.
197	Edward McCabe	Illegal imprisonment by United States.	—, 1863	Brooklyn, N. Y.		20, 000 00		Disallowed Jan. 17, 1873.
198	Mary S. Hill	Illegal imprisonment by United States.	—, 1864	New Orleans, La.		\$4, 000		Award for \$1,360 Sept. 3, 1873.
199	Amos England	Illegal seizure of Tubal Cain by United States.	April 8, 1863	New York City		\$98, 378 74	And interest.	Award for \$4,800 Mar. 3, 1873.
200	John K. Byrne	Furniture, &c., burned by United States Army.	June —, 1862	Horry County, S. C.		588 00	And interest.	Disallowed July 21, 1873.
201	John L. Lewis	Rosin still seized by United States.	Mar. 9, 1865	Charleston, S. C.		2, 450 00	And interest.	Award for \$321 Jan. 7, 1873.
202	Janet M. McClure	For timber cut and used by United States Army.	1861 and 1862	Fairfax County, Va.		128 00		Award for \$201 Jan. 17, 1873.
203	Thomas H. Facer	Furniture, &c., taken and destroyed, and illegal arrest by United States Army.	—, 1864	Charlotte County, Va.		954 00		Disallowed Dec. 14, 1872.
204	Edw'd H. M. Purcell	Wood, corn, rope, bagging, and twine taken and used by United States Army.	1863 and 1865	Rodney, Miss.		352 20		Award for \$112 Jan. 7, 1873.
205	James B. Halley, administrator of Jas. Pollock.	Cotton, corn, bacon, &c., taken and used by United States Army.	Aug. 6, 1862	Itawamba County, Miss.	2, 969 00	4, 669 00		Disallowed April 2, 1873.
206	Thomas Byrne	Cotton taken and used by United States Army.	Jan. —, 1863		1, 200 00			
207	Isaac Milner, claimant, died, and case was revived in the name of Joanna R. Milner, administratrix.	Cotton taken and used by United States Army.	Jan. —, 1864		500 00			
208	James McVea	Sugar and molasses taken and sold by United States Army.	June 19, 1863	Terrebonne Parish, La.		121, 054 68		Disallowed June 12, 1873.
209	John N. Wilson	One horse, wheat, bacon, corn, beef, &c. taken and used by United States Army.	Nov. 17, 1864	Tishomingo County, Miss.	37, 500 00			
210	John N. Wilson	One mare, 1 jack, poultry, rails, &c., taken and used by United States Army.	Nov. 17, 1864	Lauderdale County, Ala.	1, 326 00	70, 709 00		Award for \$2,310 Apr. 10, 1873.
211	Thomas Grant	Illegal imprisonment by United States Army. Sugar, tobacco, horse, &c., taken by United States Army.	April —, 1864 Mar. 18, 1863	Maury County, Tenn. Parish of West Baton Rouge, La.	30, 000 00 9, 641 25	19, 641 25	And 2 per ct. interest.	Disallowed March 6, 1873.
212	John N. Wilson	Illegal imprisonment by United States Army. Furniture, &c., taken, used, and destroyed by United States Army.	Feb. 1, 1864 Sept. —, 1862	Parish of West Baton Rouge, La. New Orleans, La.	10, 000 00	100, 000 00 15, 140 00		Award for \$200 Mar. 19, 1873. Disallowed Mar. 10, 1873.
213	Thomas Grant	Loss of time and business. Tobacco burned by United States Army. Tobacco captured by United States vessels.	1864 and 1865	Petersburgh, Va. Maysville, S. C. At sea	7, 000 00 1, 440 00 1, 557 50	10, 027 50		Disallowed Oct. 3, 1872.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
212	John C. Ferris, admistr of John Denolue Smith.	School furniture, books, fences, house, &c., taken, used, and destroyed, and loss of business, by United States Army.	1862 and 1863	Athens, Ala.	.....	\$11,771 00	.....	Disallowed April 14, 1873.
213	Levi Phillips.....	Stock of goods, furniture, &c., taken, used, and destroyed, and damage to business and goods, by United States Army.	Feb. 17, 1863, and 1864.	Memphis, Tenn.	.....	22,600 00	.....	Award for \$750 Mar. 32, 1873.
214	Eugenie Harvey <i>et al.</i>	Molasses on schooner Pacificque, captured by United States steamer Stars and Stripes. No appeal to Supreme Court.	Mar. 27, 1863	Off Florida coast.....	.....	£318 1 8	And interest.	Disallowed Jan. 31, 1873.
215	Nazairo Lonioux ..	Schooner Pacificque, captured by United States Steamer Stars and Stripes. No appeal to Supreme Court.	Mar. 27, 1863	Off coast of Florida.....	.....	\$1,403 00	.....	Disallowed Jan. 31, 1873.
216	Benj. Whitworth <i>et al.</i>	Ship Boyne, warped off the whole southern coast by United States steamship Niagara.	May 11, 1861	Off Savannah, Ga.....	.....	£6,460 13 0	And interest.	Award for \$32,553 June 24, 1873.
217	Samuel Simpson ..	Illegal imprisonment by United States. Cotton burned by United States Army.	Dec. 1, 1864	New Orleans, La.....	\$35,873 97	} \$80,178 74	.....	Disallowed Mar. 24, 1873.
218	Wilhelmina Birdsell.	Mules, sugar, and furniture used and destroyed by United States Army.	Mar. 15, 1864 July 8, 1863	Alexandria, La..... Jackson, Miss.....	44,204 77 5,000 00		.....	
		Boots, shoes, dry-goods, &c., used and destroyed by United States Army.	Apr. —, 1865	Selma, Ala.....	15,000 00	31,500 00	.....	Disallowed Aug. 27, 1873.
219	Joseph Lee.....	Damage for loss of business, health, &c. Cotton seized and destroyed by United States Army.	Aug. —, 1862	Cherokee, Ala.....	11,500 00	4,500 00	.....	Disallowed April 16, 1873.
220	William Cleary.....	Hay, corn, oats, mules, cows, hogs, poultry, furniture, &c., taken and used by United States Army.	Dec. 24, 1864	Savannah, Ga.....	15,038 50	} 20,038 50	And 7 per ct. interest.	Award for \$3,000 Apr. 10, 1873.
		Injury to person by a United States soldier.	— —, 1865	.....	5,000 00		And 7 per ct. interest.	Disallowed April 10, 1873.
221	Rosanna Hogan.....	Two horses, 1 mule, 1 cow, 3 hogs, poultry, &c., taken and used by United States Army.	Apr. 8, 1865	Macon, Ga.....	.....	850 00	And 7 per ct. interest.	Disallowed April 10, 1873.
222	Bridget Reardon.....	Rice, flour, tobacco, sugar, United States currency, &c., taken and used by United States Army.	Dec. 22, 1864	Savannah, Ga.....	.....	675 00	And 7 per ct. interest.	Disallowed April 10, 1873.
223	John D. Noble	Lead mine and fixtures, store-house, stock of goods, &c.; illegal imprisonment, loss of business, &c., caused by United States Army.	1861, 1862, & 1863.	Newton County, Mo.....	.....	300,000 00	.....	Disallowed June 26, 1873.
224	John Carew.....	Tobacco seized and used by United States Army.	Apr. 3, 1865	Fredericksburgh, Va.....	42,150 50	} 62,150 50	And interest.	Disallowed Sept. 1, 1873.
		Illegal imprisonment by United States	Apr. 3, 1865	Fredericksburgh, Va.....	20,000 00		.....	

225	James L. McElhose	Cotton seized and sold by United States, and interest on \$11,050.70 to date of decree of Court of Claims; net proceeds received through Court of Claims.	Apr. 17, 1865	Charleston, S. C.	.....	.....	8, 576 18	And interest.	Dismissed for want of jurisdiction, and without prejudice, Nov. 29, 1872.
226	Joseph W. Scott	Saw-mill and lumber taken by United States Army.	Feb. 13, 1864	Jacksonville, Fla.	.....	334, 850 00	536, 350 00	{	Award for \$12,450 Aug. 11, 1873.
227	Charles Wright	Two houses burned by United States Army.	Feb. 13, 1864	.....	.....	1, 500 00	.....	.....	Disallowed Jan. 17, 1873.
228	George Symmers	Illegal imprisonment by United States.	Nov. 19, 1864	Obion County, Tenn.	.....	200, 000 00	90, 000 00	.....	Disallowed Sept. 12, 1873.
229	Henry E. and Alfred Cox	Tobacco, cloth, coffee, sugar, blankets, flannel, whiskey, wines, liquors, dry-goods, &c., burned by U. S. Army.	Dec. 7, 1863	Columbia, S. C.	.....	.....	44, 314 37	.....	Disallowed Mar. 12, 1873.
230	James B. Smith	Saw and grist mill and fixtures, dwelling and out-houses destroyed by United States Army; bacon, sugar, corn-meal &c., taken and used by United States Army.	Feb. 16, 1861	Columbus, Miss.	.....	.....	24, 537 00	.....	Award for \$3,750 Mar. 31, 1873.
231	James Bain	Horses, mules, cattle, hogs, bacon, molasses, furniture, &c., taken, used, and destroyed by U. S. Army.	Sept. 11, 1864	Baldwin County, Ala.	.....	33, 675 00	41, 753 00	.....	Disallowed Nov. 18, 1872.
232	Charles Coleman; claimant died, and case was revived in the name of L. I. Coleman, administrator.	Mules, cows, furniture, &c., taken, used and destroyed by U. S. Army.	Mar. —, 1865	.....	.....	8, 078 00	700 00	And \$784 interest.	Disallowed Apr. 14, 1873.
233	Henry F. White	For mortgage-lien on property burned by United States Army.	Sept. —, 1862	Bolivar County, Miss.	.....	.....	30, 350 00	And interest.	Disallowed Apr. 28, 1873.
234	John Simpson	Codice captured in the Sally Maggee by United States steamer Quaker City.	June 27, 1861	At sea	.....	.....	.....	.....	Disallowed Jan. 17, 1873.
235	James T. Monroe	Illegal imprisonment by United States; One horse and 25,000 pounds tobacco taken and used by U. S. Army.	Jan. 5, 1862	Taylor County, Ky.	.....	5, 000 00 3, 200 00	8, 200 00	.....	Award for \$1,540 Jan. 23, 1873.
236	David Jacobs	One horse, saddle and bridle, boots, shoes, cattle, hoes, and corn, taken and used by United States Army; house and furniture burned by United States Army.	—, 1861	Prince William Co., Va.	.....	.....	410 00	.....	Award for \$20,000 Sept. 16, 1873.
237	Richard H. Thompson	Illegal imprisonment by United States; money, clothing, and goods taken from him by U. S. officers and steam-cupine and saw-mill &c. lost.	Aug. —, 1864	New Orleans, La.	.....	.....	100, 000 00	.....	Gold, and 7 per cent. interest.
		Diamonds, gold and silver watches, United States currency, bank-bills, cotton, tobacco, liquors, general merchandise, house and hotel furniture, &c., burned and used by United States Army.	Feb. 17, 1865	Columbia and Camden, S. C.	.....	.....	380, 575 00	.....	Award for \$2,415 July 23, 1873.
		Cotton taken and destroyed by United States Army.	Mar. —, 1863	Isaana County, Miss.	.....	.....	16, 200 96	Gold, and interest.	

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
238	Frederick A. Rolph	Illegal imprisonment by United States.	Nov. 27, 1862	Jackson, Tenn.	.....	\$21,000 00	.....	Disallowed Jan. 17, 1873.
239	Anderson, Saxon & Co.	Coal taken by United States steamer Vanderbilt.	Oct. —, 1863	Penguin Island.	.....	\$1,500 0 0	And 7 per cent. interest.	Award for \$11,200 Aug. 21, 1873.
240	Thomas Gabriel & Sons.	Timber cut adrift, lost, or destroyed by United States Army.	Between Apr. 9, 1863 & Apr. 9, 1865.	Altamaha River, Ga.	.....	\$3,011 00	And 7 per cent. interest.	Disallowed Jan. 13, 1873.
241	James Long	Tobacco seized and burned by United States Army.	Feb. —, 1865	Bristol, Tenn.	.....	5,667 00	.....	Disallowed April 16, 1873.
242	Alice Barton, executrix, and Wm. Cogan, executor, of Richard C. Barton.	Fish taken and used by United States Army.	Aug. 31, 1862	Alexandria, Va.	.....	510 50	.....	Disallowed Dec. 14, 1872.
243	Edwin Gerard, assignee of T. A. Corry, J. Laycock, and A. and S. Henry & Co.	Sir William Peel captured by United States steamer Seminole. For cargo.	Sept. —, 1863	At sea	.....	369,000 00	And interest.	Award for \$272,920 April 28, 1873.
244	Edwin Gerard, assignee of certain underwriters at Lloyds.	Part of cargo of Dashing Wave, captured by United States steamers Owaseo and Virginia.	Nov. —, 1863	Rio Grande River.	.....	\$35,314 16 9	.....	Disallowed April 24, 1873.
245	Edwin Gerard, assignee for the Universal Marine Insurance Company, of London; also of the liquidators of the English and Scottish Marine Insurance Company, of London; also, of certain underwriters at Lloyds; also attorney in fact for the British and Foreign Marine Insurance Company, of Liverpool.	Brix Volant's cargo, captured by United States steamer Virginia.	Nov. —, 1863	At sea	.....	{ £3,000 0 0 \$13,348 00	.....	Disallowed April 24, 1873.
246	William H. Slater	Wood, timber, fruit-trees, cows, horse, hogs, mules, &c., &c., taken, used, and destroyed by United States Army, and damage to store.	June, 1862, to April, 1863.	Jackson Tenn.	.....	\$30,348 26	And interest.	Award for \$1,785 April 24, 1873.
						3,600 00	.....	Award for \$800 Mar. 31, 1873.

247	John Gale	Illegal imprisonment by United States Army. Two horses, taken and used by United States Army.	April 22, 1863	De Soto County, Miss.	\$1,000 00 1,300 00	2,300 00	.....	Award for \$856 April 14, 1873.
248	Robert H. Watt, administrator of Hugh Watt.	Cattle, mules, horses, hogs, corn, molasses, sugar, bacon, sheep, and cotton taken and used by United States Army.	1862 and 1863	Warren County, Miss.	.....	43,310 00	\$21,647 65	Award for \$6,480 June 13, 1873.
249	Sarah Watts.....	Furniture, &c., burned by United States Army.	Feb. 17, 1865	Columbia and Camden, S. C.	.....	2,132 00	And interest.	Disallowed Sept. 16, 1873.
250	Alan K. McMillan..	Dwelling and workshop, stock and material, burned by United States Army.	Feb. 15, 1864	Enterprise, Miss.	.....	4,500 00	And interest.	Disallowed April 22, 1873.
251	Elizabeth Armstrong, administratrix of Robert Armstrong.	Horses, cattle, flour, furniture, merchandise, &c., taken, used, and destroyed, and store-house and warehouse burned by United States Army.	1861, 1862, and 1863.	Creek Agency, Creek Nation.	.....	57,022 45	.....	Award for 1,660 Aug. 12, 1873.
252	James Leslie.....	Stock of goods (queensware and general grocery) taken and used by United States Army.	May —, 1863	Jackson, Miss.	10,000 00	.....	.....	.....
		Stock of goods (dry goods, groceries, &c.) and dwelling-house, burned by United States Army.	Feb. 7, 1864	Brandon, Miss.	10,000 00	20,000 00	And interest.	Disallowed Aug. 23, 1873.
253	Colin J. Nicolson ..	Illegal imprisonment by United States Army. Loss on vouchers	Sept. 15, 1864	New Orleans, La.	500,000 00 3,125 81	503,125 81	And interest at 8 per ct.	Claim for vouchers withdrawn May 5, 1873, and rest of claim disallowed Aug. 19, 1873.
254	William Gimson.....	Dwelling-house, corn, fodder, one horse, furniture, flour, groceries, &c., taken, used, and destroyed by United States Army.	Feb. 19, 1863	Crittenden County, Ark.	.....	15,514 15	And interest	Award for \$611 July 23, 1873.
255	Susan B. Jackson, widow of John	Illegal imprisonment and banishment of her husband and self, &c., by United States Army.	Sept. —, 1863	Knoxville, Tenn.	.....	29,000 00	.....	Award for \$2,544 July 18, 1873.
256	Archibald Montgomery.	Cotton taken and sold by United States Army. Claim was on docket of Court of Claims.	— —, 1864	Buffalo Bayou, La.	.....	500,000 00	.....	Disallowed Jan. 20, 1873.
257	William B. Poynton.	Match factory and fixtures and stock burned by United States Army.	.....	Atlanta, Ga.	.....	220,163 85	.....	Disallowed Apr. 20, 1873.
		Match factory, fixtures, and stock burned, and horses, &c., taken by United States Army.	.....	Decatur, Ga.	.....	.....	.....	.....
258	Geo. M. Bretherick..	Saw and grist mill and machinery, cotton, horses, mules, corn, bacon, sheep, cattle, &c., taken, used, and destroyed by United States Army.	Nov. 9, 1863	Lauderdale County, Ala.	.....	9,150 00	.....	Disallowed Jan. 20, 1873.
259	Samuel Miller	Cotton burned by United States Army. One mule, pork, beef, corn, and wheat, taken and used by United States Army.	Dec. 10, 1862 Nov. 17, 1864	Colbert County, Ala.	13,100 00 1,710 00	14,810 00	.....	Award for \$1,170 Apr. 16, 1873.

C.—*Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.*

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amt't claimed.	Interest claimed.	How disposed of.
260	James A. Macauley.	Cotton burned on board steamship <i>Blanche</i> by United States steamship <i>Montgomery</i> .	June —, 1862	At sea .....	.....	\$200,000 00	Gold	Disallowed Mar. 25, 1873.
261	Benjamin J. Brethrick.	Corn, wheat, and pork taken and used by United States Army.	Dec. 30, 1864	Landerdale County, Ala. ....	.....	185 00	.....	Award for \$136 Jan. 20, 1873.
262	Arthur C. and Frances Evans.	Illegal imprisonment of self and wife by United States.	Apr. —, 1863	Prince William County, Va.	\$4,000 00 1,558 50	5,558 50	\$2,334 57	Disallowed Mar. 28, 1873.
263	Joseph B. Heycock, administrator of John Spinnery.	Horses, merchandise, clothing, &c., taken and used by United States Army.	.....	.....	.....	3,177 68	.....	Disallowed Nov. 14, 1872.
264	Frederick W. Ruggles.	Loss by capture and detention of schooner <i>Argonaut</i> by United States steamer <i>Susquehanna</i> . No appeal to Supreme Court.	Sept. 13, 1861	Off Hatteras Inlet ..	.....	14,192 24	.....	Disallowed Nov. 14, 1872.
265	Henry A. Moody, administrator of Henry Moody.	Damage to cargo of schooner <i>Argonaut</i> captured by United States steamer <i>Susquehanna</i> . No appeal to Supreme Court.	Sept. 13, 1861	Off Hatteras Inlet ..	.....	7,463 80	.....	Disallowed Apr. 16, 1873.
266	John A. Thurber.	Cotton, flour, hogs, goats, poultry, fodder, &c., taken, used, and destroyed by United States Army.	1863, 1864, and 1865.	Mississippi and Alabama.	.....	3,800 00	.....	Award for \$1,120 Feb. 24, 1873.
267	Thomas Hebdon.	Use of and damage to dwelling, two cows, vegetables, lumber, &c., taken and used by United States Army.	Sept. —, 1862	Algiers, La. ....	.....	1,352 00	.....	Disallowed Nov. 29, 1872.
268	Charles Sabourin. Claimant died, and case was revived in the name of Jane Sabourin, administratrix.	Brick-machine destroyed by United States Army; one mule, hay, corn, and hogs, taken and used by United States Army.	1861 and 1862	Warrensburg, Mo. ....	.....	78,144 45	.....	Award for \$730 June 24, 1873.
269	George Wigg.	Cotton burned by United States Army. Horses, surgical instruments, medicines, and drugs, taken and used by United States Army.	Apr. —, 1864	Natchitoches, La.	76,144 45 2,000 00	78,144 45	.....	.....
270	Shand, Higson & Boul.	Schooner <i>Isabel</i> and cargo of cotton seized by United States steamer <i>J. L. Davis</i> and sold by United States.	Sept. —, 1862	At sea .....	.....	71,317 00	And interest.	Disallowed July 31, 1873.
271	Geo. Wigg & Samuel Isaac.	Steamship <i>Pearl</i> , seized by United States steamer <i>Tioga</i> and sold by United States.	Jan. —, 1863	At sea .....	.....	£15,000 00	And interest.	Disallowed, Feb. 24, 1873.
		Steamer <i>Virgin</i> , seized by the Confederate authorities, and afterward captured by the United States.	After April 9, 1865.	Mobile, Ala. ....	.....	\$150,000 00	And interest.	Dismissed for want of jurisdiction Oct. 4, 1872.

272	Joseph M. P. Nolan.....	Illegal imprisonment by United States Army.	Oct. 18, 1861	Saint Louis, Mo.	934,000 00	.....	Award for \$8,600, Aug. 4, 1873.
273	Mary Nolan.....	Illegal imprisonment by United States Army.	Sept. 15, 1862	Saint Louis, Mo.	10,000 00	.....	Disallowed Apr. 1, 1873.
274	M. M. Bell.....	Molasses taken, used, and destroyed by United States Army.	Oct. —, 1864	Point Coupee Parish, La.	22,000 00	And interest at 8 per ct.	Disallowed Aug. 16, 1873.
275	Joseph E. Ware.....	Engine, gearing, pumps, tools, shops, iron pipe, &c., destroyed and burned by the United States Army; molasses and sugar taken and used by United States Army; and illegal imprisonment by United States.	Oct. —, 1862	Fulton County, Ark.	54,374 30	.....	Disallowed Mar. 19, 1873.
276	George J. Jones.....	Illegal imprisonment, &c., by United States.	Feb. 21, 1862, Nov. 1, 1862, Mar. 7, 1863.	Saint Louis, Mo.	8,000 00	.....	Disallowed Mar. 6, 1873.
277	Mary Hutchinson.....	Detention of and damage to schooner D. F. Keeling by United States, and expenses incurred on account thereof. No appeal to the Supreme Court.	Oct. —, 1861	New York	18,063 79	And 7 per ct. interest.	Disallowed Apr. 16, 1873.
278	Ann White.....	Cotton seized by United States.....	Feb. 5, 1863	Near Florence, Ala.	990 00	.....	Award for \$309 Apr. 28, 1873.
279	Emily J. Sherard, later Emily J. Gil-land, administratrix of William Sherard, William Brown	Stock of goods taken, used, and destroyed by United States Army. Bricks, lumber, fence, posts, and 1 cow, taken and used by United States Army.	May 13, 1863	Raymond, Miss	6,550 00	And interest at 6 per ct.	Award for \$1,600 Aug. 30, 1873.
280	William Brown	Corn, bacon, cattle, fodder, straw, rails, 1 horse, 1 mule, and dwelling-house, taken and used by United States.	1862 and 1863	Fauquier County, Va.	1,130 30	And interest.	Award for \$623, Jan. 7, 1873.
281	Saunders & Son.....	27 vessels and their cargoes, captured by United States. No appeal to Supreme Court.	During the war.	At sea	152,643 51	Gold, at 6 per cent.	Disallowed Jan. 17, 1873.
282	Benjamin Thornton.....	Timber and wood taken and used by United States Army.	Nov. —, 1863	Fairfax County, Va.	43,299 50	At 7 per cent. interest.	Award for \$38,957 Mar. 22, 1873.
283	George Cooper.....	Dwellings and out-buildings, fence, garden, &c., taken and used by United States Army.	Sept. 20, 1862	Memphis, Tenn.	4,000 00	.....	Award for \$4,183 Jan. 20, 1873.
284	Peter A. Spearwater.....	For damage and detention of schooner Echo and cargo by United States steamer Sunflower. No appeal to the Supreme Court.	May 31, 1863	At sea	11,615 23	.....	Disallowed Mar. 31, 1873.
285	John, alias John F. Parr.....	Illegal imprisonment by United States Carriages, biggies, iron safe, promissory notes, account-books, &c., taken and destroyed by United States Army.	Oct. 20, 1861	Buffalo, N. Y.	13,900 00	And interest.	Award for \$4,800 Aug. 5, 1873.
286	William H. Gillatt.....	Furniture, clothing, &c., taken, used, and destroyed by United States Army.	Mar. 1, 1862	Clarksville, Tenn.	2,401 20	And interest	Disallowed Jan. 7, 1873.
287	Sheldon Lewis.....	74 coops of fowls, seized by United States on bark Matilda.	Oct. —, 1863	New York	2,213 66	.....	Award for \$1,849 Mar. 8, 1873.
288	Oliver K. King, administrator for William Stewart.....	Damages and detention of the schooner Matamoras by United States steamer Virginia. No appeal to Supreme Court.	Nov. 4, 1863	Matamoras, Mexico	41,332 19	\$24,447.39 int. and int. to date of payment.	Disallowed May 6, 1873.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
229	Thomas Leach.....	Illegal imprisonment by United States Steamer Douro seized and detained by United States.	July 20, 1863 July 20, 1863	New York City..... New York City.....	\$10,400 00 4,000 00	\$14,400 00	Int. on \$400 And int.	{ Disallowed Feb. 3, 1873. Disallowed Dec. 7, 1872.
230	A. E. Campbell & Co.	Sugar captured on brig John Welch by confederate privateer Jeff Davis, and sold by confederate government, proceeds held for claimant by confederate government and seized by United States, with other assets of said confederate government.	—, 1865	Charleston, S. C.....	.....	25,881 50	And interest	
231	Ann Grayson, administratrix for John J. Cowley.	Cotton, broadcloth, jeans, shirts, clothing, &c., taken, used, and destroyed by United States Army.	Apr. 2, 1865	Selma, Ala.....	.....	15,000 00	And interest.	Award for \$1,637 June 14, 1873.
232	Cowiam Graveley..	Brig Sarah Starr, captured by United States steamer Wabash and sold by United States, and for fees, demurrage, &c.	Aug. 3, 1861	Near Wilmington, N. C.	.....	20,000 00	And int....	Disallowed, as to Sarah Starr and Aigburth, Nov. 8, 1872, the reasons for non-appeal being deemed insufficient.
233	Roderick Byrne.....	Schooner Aigburth captured by United States steamer Jamestown and sold by United States, and for fees, demurrage, &c.	Sept. 1, 1861	At sea.....	.....	75,000 00	And int....	
234	Frederick Ward....	Wine destroyed by United States Army.	Feb. 25, 1865	Camden, S. C.....	5,430 00			
235	George Wostenholn	Cotton burned by United States Army.	Feb. 17, 1865	Columbia, S. C.....				
236	John Deighen.....	Cotton burned by United States Army.	Feb. 22, 1865	Winnboro, S. C.....	111,400 00	116,830 00	And interest	Disallowed Sept. 16, 1873.
237	Herman Baer, administrator of Barry Drew Hewetson.	Cotton burned by United States Army. No appeal to Supreme Court.	Feb. 22, 1865	Fairfield County, S. C.				
238	C. Eugenia O'Bryan, administratrix of Perry O'Bryan.	Cotton seized and sold by United States; net proceeds received through the Court of Claims.	Feb. 1865	Charleston, S. C.....	.....	9,779 24	And int., and interest on \$8,428.96 for 3 years.	Disallowed Apr. 16, 1873.
239	Frederick Ward....	Patterns of cutlery taken by United States Army.	Feb. 17, 1865	Columbia, S. C.....	.....	1,000 00	And interest.	Disallowed Sept. 12, 1873.
240	George Wostenholn	Patterns of cutlery taken by United States Army.	Feb. 17, 1865	Columbia, S. C.....	.....	845 80	Gold, and interest.	Disallowed Sept. 12, 1873.
241	John Deighen.....	Cotton burned by United States Army. Horse, buggy, and harness taken and used by United States Army.	Feb. 17, 1865	Blackville, S. C.....	76,444 00	77,440 00	And interest.	Award for \$1,510 Sept. 17, 1873.
242	Herman Baer, administrator of Barry Drew Hewetson.	Cotton seized by United States.....	Feb. 1865	Columbia, S. C.....	1,000 00	1,719 00	And interest.	Award for \$1,854 Aug. 4, 1873.
243	C. Eugenia O'Bryan, administratrix of Perry O'Bryan.	Cotton seized by United States.....	Apr. 5, 1865	Charleston, S. C.....	.....	3,100 00	And interest.	Award for \$3,321 Aug. 6, 1873.

299	William McKay	Cotton, sugar, oil, whisky, tobacco, beef, and coffee taken and used by United States. Cotton claim was on docket of Court of Claims.	Feb. 7, 1865	Charleston, S. C.	10, 498 00	And interest.	Award for \$2,800 June 23, 1873.
300	John C. Forbes	Cotton burned by United States Army	Feb. 5, 1865	Louisiana and Arkansas.	2, 254, 800 00	And interest.	Disallowed Sept. 25, 1873.
301	John Haskins.	For use and damage to Factor's Cotton Press, Anchor Cotton Press, Louisiana Cotton Press, and Yards No. 1, 2, and 3, and stables, yards, quarters, &c., by United States.	From Sept., '62 to Apr., '65.	New Orleans, La.	211, 657 40	And int. at 6 per cent.	Award for \$103,600 Jan. 31, 1873.
302	Thomas Arkwright	Cotton, seized and sold by United States. Now pending in the Court of Claims.	Jan. —, 1865	Savannah, Ga.	9, 654 20	.....	Withdrawn by Her Britannic Majesty's agent, Feb. 4, 1873.
303	William Rose; became an United States citizen.	Cotton seized and sold by United States. Now pending in the Court of Claims.	Jan. —, 1865	Savannah, Ga.	25, 915 16	.....	Withdrawn by Her Britannic Majesty's agent, Feb. 4, 1873.
304	Emilia J. Pothier, executrix of L. B. Pothier.	Cotton seized by United States.	Apr. —, 1863	Red River, La.	17, 935 00	.....	Disallowed April 9, 1873.
305	Laura Armitage, wife of Robert Armitage; No. 348 rs. The United States.	Saddle, bridle, stirrups, needles and thread, taken by United States Army.	Jan. 6, 1865	Savannah, Ga.	5, 195 00	7 per cent.	Withdrawn by Her Britannic Majesty's agent, Oct. 4, 1872.
306	Henry A. McLeod.	For schooner Prince Leopold, seized and sold by United States, and \$2,500 per annum, value of said vessel to claimant, from September 1, 1861. No appeal to Supreme Court.	Aug. —, 1861	New York City.	35, 000 00	.....	Disallowed Nov. 14, 1872.
307	Norman W. McCall, administrator of Hugh McCall.	Cypress lumber, machinery of saw-mill saws axes chains blacksmith's tools, carpenter's tools, material damage to buildings, &c., by United States Army.	1862 and 1863	Bayou Millam, La.	18, 113 47	8 per cent.	Award for \$3,790 July 21, 1873.
308	Robert Dignum.	Flour, pork, beef, sugar, coffee, furniture, account books, library, tools, damage to house, suspension of business, &c., by United States Army.	Dec. 10, 1862	Fredericksburgh, Va.	3, 050 00	6 per cent.	Disallowed Jan. 13, 1873.
309	Lucie F. Garrett, administratrix of Charles Fleming.	Two mules, two horses, team, cattle, building, fencing material and implements in foundry, rope, &c., taken, used and destroyed by United States gumbout Clifton.	— —, 1863	Parish of St. Mary, La.	17, 990 00	And interest.	Dismissed for want of jurisdiction, June 10, 1873, claimant having married an United States citizen, and there being no British beneficiaries.
310	William Whitty.	Bayou land, sugar, wine, wool, &c., destroyed by United States Army. Molasses taken by United States Army.	May 13, 1864 Apr. 9, 1864	Alexandria, La. Bayou Robert, La.	2, 928 90 6, 500 00	And interest.	Disallowed June 16, 1873.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
311	John C. Burden. Claimant died, and case was revived in the name of Emma G. Burden, administratrix.	Nine beavers Property taken and damage to house. Wagon and 4 mules Destruction of house Thirteen mules taken Seven mules taken Loss of provisions, &c. Six horses taken Four hogheads sugar and three bales of cotton. (Taken, used, and destroyed by United States Army.) Whisky, tobacco, rubber-bands, drugs, oil, hardware, clothing, dry-goods, furniture, books, stationery, saddles, harness, hogs, poultry, and money, &c., taken, used, and destroyed by United States Army. Damage to store-house and business ..	July —, 1862 Aug. —, 1862 Aug. —, 1863 Apr. —, 1863 Jan. —, 1864 —, 1864 —, 1864 —, 1864	Baton Rouge, La.	\$1,400 00 2,397 00 2,050 00 2,700 00 2,600 00 2,400 00 3,700 00 1,000 00 700 00	\$17,447 00	And interest.	Award for \$9,780 July 18, 1873.
312	Eliza and Jane Murdock.	(Taken, used, and destroyed by United States Army.) Whisky, tobacco, rubber-bands, drugs, oil, hardware, clothing, dry-goods, furniture, books, stationery, saddles, harness, hogs, poultry, and money, &c., taken, used, and destroyed by United States Army. Damage to store-house and business ..	Dec. 11, 1863	Saint Joseph, La.	6,091 50	12,891 49	And interest.	Award for \$1,121 Feb. 3, 1873.
313	William E. Hall	Cotton seized by United States Army.	Jan. —, 1864	Caliberne County, Miss.	6,799 99	175,725 00	And interest.	(Dismissed for want of jurisdiction without prejudice to the prosecution of the claim elsewhere, Jan. 20, 1873. Disallowed Dec. 17, 1872.
314	Barron, Forbes & Co.	Cotton seized by United States Army. Claim pending in the Court of Claims. Quicksilver mine from which claimants were ejected by United States.	June —, 1865	Santa Clara County, Cal.	33,075 00	14,800,000 00	And interest.	Award for \$40,843 July 7, 1873.
315	Andrew E. Byrne <i>et al</i>	Damage for steamer Monmouth being warned off the coast of all the Southern States by United States steamer Niagara.	May 8, 1863 May 12, 1861	Off Charleston, S. C. ....	..... .....	£10,572 10 0	Gold, and interest, and costs.	
316	S. Isaac, Campbell & Co.	For cargo of Springbok, captured by United States steamer Sonoma. Costs and expenses incurred by claimants.	Feb. 3, 1863	At sea	£26,378 11 11 2,000 0 0	£68,378 11 11	And interest.	Disallowed Sept. 22, 1873.
317	James Meagher	Cotton seized and sold by the United States. Claim on docket of Court of Claims.	Sept. —, 1863	Hinds County, Miss. ....	.....	\$70,000 00	And interest.	Part of claim withdrawn Nov. 27, 1872, and rest dismissed without prejudice to the prosecution of the claim elsewhere, April 30, 1873.
318	Richard Hall	Illegal imprisonment by United States.	May 6, 1864	Maryland .....	.....	25,000 00	Interest and costs.	Award for \$2,084 Aug. 30, 1873.
319	Hugh Carlisle	Cotton seized and sold by United States. Now pending in Court of Claims.	June 13, 1864	Guntersville, Ala. ....	.....	40,000 00	Interest and costs.	Claim withdrawn by Her Britannic Majesty's agent, Nov. 27, 1872.

320	Elizabeth L. H. Bates; married a United States citizen.	Tobacco factory and fixtures destroyed by United States Army; tobacco, horses, mules, flour, meal, bacon, &c., &c., taken and used by United States Army; burned at Richmond, Va., by reason of the United States restraining claimant from removing the same.	Mar. —, 1865	Goochland County, Va.	85,810 00	.....	Disallowed April 20, 1872.
321	Laurie, Son & Co ...	Tobacco burned at Richmond, Va., by reason of the United States restraining claimant from removing the same.	Apr. 3, 1865	Richmond, Va.	33,259 00	Gold	Disallowed Oct. 5, 1872.
322	Samuel Irvin & Co.	Tobacco burned at Richmond, Va., by reason of the United States restraining claimant from removing the same.	Apr. 3, 1865	Richmond, Va.	29,600 00	Gold and interest.	Disallowed Oct. 5, 1872.
323	Eliza H. Molyneux, executrix of Ed- mund Molyneux, and George H. W. B. Money.	Injury to dwelling, furniture, &c., of claimant and cotton taken by United States Army.	Dec. —, 1864	Savannah, Ga.	21,600 00	.....	Award for \$12,000 Sept. 22, 1873.
324	William Ashton ...	For depreciation in Bank of Louisiana stock by the "civil war."	— —, 1862	New Orleans, La.	34,320 00	.....	Disallowed April 20, 1872.
325		For depreciation of bank notes taken by officers of United States steamer Dan Smith.	Feb. 8, 1863	Potomac River.	\$905 60	.....	
		Money taken by same.	Feb. 8, 1863	Potomac River.	353 00	.....	
		Illegal imprisonment by United States Army.	Feb. 8, 1863	Potomac River.	15,000 00	.....	
		Furniture, &c., burned by United States Army.	Feb. 17, 1865	Columbia, S. C.	1,000 00	.....	
		Expenses in removing to place of safety.	.....	.....	500 00	.....	
326	John Murphy	Cotton and turpentine seized by United States Army.	Mar. 9, 1865	Charleston, S. C.	5,600 00	.....	
		Resin burned by United States Army.	Apr. 6, 1865	Williamsburgh County, S. C.	2,500 00	And interest.	Disallowed Sept. 17, 1873.
327	David J. Browne	Claim for cotton and turpentine; was on deck of Coast of Chalmers.	.....	.....	.....	.....	
		Cotton burned by United States Army.	July —, 1863	Mississippi	147,576 00	.....	
		Cotton burned by United States Army.	— —, 1864	Mississippi	133,000 00	And interest.	Disallowed Sept. 24, 1873.
328	William G. Ford, administrator of J. G. Robinson.	Cotton burned by United States Army.	1863 or 1864	Mississippi	44,484 00	And interest.	Award for \$29,638 for the benefit of Mary G. Barker, or her representatives, Sept. 24, 1873.
		Cotton seized and sold by United States.	— —, 1863	OWI Creek, La.	88,260 00	.....	Award for \$1,000 April 28, 1873.
329	John Q. Watkins and Bernard Donnelly, administrators of John Shannon.	Dry goods taken by United States Army. Claim was first filed in the name of Samuel Jarboe, guardian, &c.	Nov. —, 1861	Kansas City, Mo.	20,000 00	.....	Disallowed June 4, 1873.
330	Thomas Kegan	Sugar, molasses, bed and dress clothes, one mule, cotton, tobacco, &c., &c., taken and used by United States Army.	May 10, 1864	Parish of Rapides, La.	9,181 40	.....	
331	John Mews & Co ...	Timber taken and used by United States.	Between April, 1863, and April, 1865.	Georgia.	\$850 0 0	And 7 per cent. interest.	Disallowed March 6, 1873.
332	Thomas Coates ...	Clothing, silk, and satin dresses, &c., lost while in charge of the United States Army.	During the war.	Virginia	350 0 0	.....	Disallowed January 13, 1873.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
333	William Smythe.....	Iron and brass foundry, machinery, shops, lumber, wood, coal, oilcloth, &c., destroyed by United States Army; two horses, harness, and buggy, &c., taken, and used by United States Army; and damage to dwelling, orchard, &c., by United States Army.	July —, 1864	Atlanta, Ga.....	.....	\$85,425 00	.....	Disallowed January 27, 1873.
334	Augustine R. Mc- Intosh.....	Cotton burned by United States Army.	Jan. —, 1865	Arkansas and Louis- iana.....	.....	716,400 00	And interest.	Award, see No. 42.
335	William H. Ross.....	For rent of mansion-house and prop- erties called "Roslyn;" damage to saw; loss of crops, and destruction of dwelling by fire while in posses- sion of United States, and interest to December 31, 1871.	1861, 1862, and 1863.	Alexandria County, Va.....	.....	98,206 89	.....	Award for \$25,548 August 21, 1873.
336	Patrick Fox.....	Illegal imprisonment by United States	Aug. —, 1863	Greenbrier County, W. Va.....	\$400 00 1,149 00 Int. 336 46	2,485 46	.....	Disallowed February 19, 1873.
337	Stephen J. Bradley.....	Two horses, wagon, harness, apple brandy, meal, corn, flour, bacon, quills, &c., taken and used by United States Army.	Aug. —, 1863	Alleghany County, Va.....	2,101 50	3,601 50	.....	Disallowed February 19, 1873.
338	Michael Kelley.....	Current money, four horses, wagon, harness, clothing, and oats taken and used by United States Army. Illegal imprisonment by United States Army.	Nov. —, 1863	Poahontas County, W. Va.....	1,500 00	579 00	.....	Disallowed October 4, 1872.
339	James Stewart.....	Gold, clothes, wheat, oats, saddle, &c., and damages by United States Army.	Jan. —, 1864	Deadman's Bend, near Natchez, Miss.....	.....	25,407 00	.....	Disallowed May 10, 1873.
340	Thomas Byrne.....	Cotton burned by United States Army.	July 17, 1863	Copiah County, Miss	.....	26,000 00	.....	Disallowed September 17, 1873.
341	John Sinclair.....	Saw and grist mill and machinery, &c., burned by United States Army; and grain, flour, books, clothes, &c., taken by United States Army.	Feb. 17, 1863	Lancaster County, S. C.....	.....	14,750 00	And interest.	Disallowed February 20, 1873.
342	Henry G. Bohn.....	Two cases books seized by United States Army.	—, 1861	Charleston, S. C.....	.....	\$67 0 0	.....	Disallowed October 4, 1872.
343	Mary A. Barrow, administratrix of George Barrow.	Illegal imprisonment of her husband by United States, and goods, books, and papers taken, used, and de- stroyed by United States Army.	Oct. —, 1862	Memphis, Tenn.....	.....	\$15,000 00	.....	Award for \$6,520 May 10, 1873.

344	Samuel and Richard Roberts.	For furnishing food and lodgings to United States officers and soldiers, and provender for United States horses.	1861 to 1864	Scott County, Tenn.	.....	2, 815 00	.....	Disallowed Oct. 3, 1872.
345	Jos. Fry Mcgridge. (Was born in the United States.)	Dry goods, glassware, stationery, groceries, drugs, medicines, liquors, &c., taken, used, and destroyed by United States Army.	1863 & 1865	Selma, Ala.	.....	282, 822 38	.....	Dismissed for want of jurisdiction Nov. 18, 1872.
346	William H. Stewart, executor of Chas. E. Stewart.	Cotton seized by United States Army. Cotton burned by United States Army. Loss on forced sale of horses, carriages, and removal of wine, glass, plate, and destruction by bombardment of furniture, china, &c.	— —, 1865 — —, 1865	Charleston, S. C. Camden, S. C.	31, 105 95 24, 261 55 3, 000 00	58, 367 50	And 7 per ct. interest.	Award for \$9, 837 Sept. 24, 1873.
347	Francis Tumblety ..	Illegal imprisonment by United States Army. Personal property and valuables taken by United States Army.	Mar. 1865 May 6, 1865 May 6, 1865	Saint Louis, Mo.	.....	100, 000 00	And int. ... }	Two last items withdrawn March 26, 1872, rest disallowed Jan. 23, 1873.
348	Robert Armitage....	Loss on sale of dwelling-house and furniture, rope, twine, needles, leather, &c., taken by United States Army.	Jan. 6, 1865	Savannah, Ga.	.....	£10, 000 0 0	.....	Award for \$200 June 16, 1873.
349	Nelson McStea.....	Cotton seized and sold by United States. Claim in Court of Claims.	Oct. —, 1863	Parish of Concordia, La.	.....	\$25, 000 00	.....	Dismissed for want of jurisdiction, without prejudice to the prosecution of the claim elsewhere, Jan. 20, 1873.
350	Thomas N. Crosse...	Books, manuscripts, wearing apparel, mineralogical specimens, gold, and copper, &c., destroyed by United States Army.	During the war.	Fredericksburgh, Va.	.....	£95 0 0	.....	Disallowed Oct. 3, 1872.
351	Elizabeth G. Warneford.	Trunk of books, music, and clothing, left with Her Britannic Majesty's vice-consul, and destroyed.	— —, 1862	Fredericksburgh, Va.	.....	\$75 00	.....	Disallowed Oct. 3, 1872.
352	Joseph W. Binney ..	Illegal imprisonment by United States.	June 14, 1864	New York City	.....	100, 000 00	Gold	Award for \$5, 390 May 6, 1873.
353	John Butterworth and John Howard, executors of Henry Kay.	Cotton burned by United States Army.	Feb. 28, 1865	Camden, S. C.	.....	5, 894 42	.....	Disallowed Sept. 16, 1873.
354	William R. Hodges...	Loss on cotton seized by United States. For restitution of tax on sugar, molasses, and cotton, paid to the United States.	Aug. —, 1864 1863 to 1865	Fort Adams, Miss. New Orleans, La.	106, 850 60 20, 924 04	.....	.....	.....
		Cotton part seized and part destroyed by United States Army.	— —, 1864	Alexandria, La.	425, 040 00	.....	.....	.....
		Cotton part seized and part destroyed by United States Army.	— —, 1864	Mississippi	224, 600 00	.....	.....	.....
		Sugar and molasses destroyed by act of United States Army.	— —, 1864	Parish of Point Coupee.	35, 175 00	.....	.....	.....
		Sugar destroyed by act of United States Army.	— —, 1864	Parish of Saint Martin, La.	81, 565 84	.....	.....	.....
		Cotton destroyed by act of United States Army.	— —, 1864	Louisiana and Mississippi.	580, 000 00	.....	And interest	Award for \$34, 150 Sept. 22, 1873.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
355	Charles Hodges.....	Loss on cotton seized by United States, and expenses incurred thereby.	Mar. 24, 1864	Fort Pike, La.....	.....	\$21, 292 87	And interest	Award for \$2,335 March 17, 1873.
356	Joseph Murphy.....	Lumber, wheelbarrows, shovels, mattresses, blankets, cooking utensils, &c., taken and used by United States Army.	June—, 1863	Parish of Madison, La.	\$4, 260 00	7, 260 00	And 8 per ct. interest.	Award for \$5,814 July 25, 1873.
357	Edward McHugh, administrator of James McHugh.	Loss on contract for building levees, &c.	.....	.....	3, 000 00	.....	.....	.....
358	Thomas H. Rollason.	Illegal imprisonment of his son by the United States.	Dec. 19, 1863	New York City.....	£ 30, 000 0 0	£34, 330 14 0	.....	Disallowed Oct. 5, 1872.
359	Elizabeth Sherman, administratrix of Thomas F. Sherman alias Thomas J. Miller.	Loss on goods at Bermuda in consequence of son's imprisonment.	—, 1862	.....	4, 330 14 0	23 17 2	.....	Disallowed Oct. 3, 1873.
360	Martha M. Calderwood executrix of John Calderwood.	Electro-plated ware, shipped and received at the custom-house, and lost.	Apr. 19, 1861	New Orleans, La.....	.....	.....	.....	.....
361	Mary Irwin.....	Abduction and illegal imprisonment of her husband by United States.	May 1, 1864	County of Essex, Canada.	.....	\$2, 565 00	Gold, and 6 per cent. interest.	Disallowed May 8, 1873.
362	John M. Calderwood.	Cotton taken and destroyed by United States Army.	—, 1864	Louisiana and Arkansas.	.....	3, 050, 135 00	And interest	Disallowed Sept. 25, 1873.
363	Llewellyn Crother.....	Cotton, mules, horses, corn, furniture, silver-plate, cattle, and meat taken and used by United States Army.	May & June, 1863.	Parish of West Feliciana, La.	\$83, 400 00	.....	.....	.....
364	Mary Irwin.....	Sugar, molasses, horses, buggy, corn, and cow taken and used by United States Army.	May & June, 1863.	Parish of Point Coupee, La.	23, 450 00	126, 850 00	{ And 6 per cent. interest. }	Disallowed May 10, 1873.
365	John G. Rennicks.....	Illegal imprisonment by United States.	May & June, 1863.	Parish of Point Coupee, La.	20, 000 00	.....	.....	.....
366	John M. Vernon.....	Illegal imprisonment by United States.	July 9, 1863	Baltimore, Md.....	100, 000 00	10, 000 00	.....	Award for \$109 May 9, 1873.
367	John M. Vernon.....	Goods and stores seized by United States Army.	—, 1863	Nashville, Tenn.....	84, 000 00	164, 000 00	.....	Disallowed Mar. 6, 1873.
368	John M. Vernon.....	Cotton, tobacco, sugar, molasses, flour, wash, turpentine, coffee, chicory, rice, salt, pea raising, spices, medicines, oils, whiskey, gin, and brandy, &c.; porter, cigars, &c., and two ships' boats, supposed to have been taken, used, and destroyed by United States Army.	During war.	Georgia, Alabama, Mississippi, Louisiana, Tennessee, South Carolina, Kentucky, Virginia, and North Carolina.	£298, 133 0 0	£338, 133 0 0	.....	The claim for cotton, &c., and so much of claim for imprisonment which was after the 9th of April, 1865, was withdrawn by the claimant July 7, 1873; the rest of the claim was disallowed Sept. 17, 1873.

365	William Dean & Co.	Cotton seized and sold by United States, now pending in Court of Claims.	Dec. 23, 1864	Savannah, Ga.	\$275,811 26	Dismissed for want of jurisdiction, without prejudice, Nov. 29, 1872.
366	William Battersby	Cotton seized by United States, now pending in Court of Claims.	Dec. 24, 1864	Savannah, Ga.	1,573,500 00	Dismissed for want of jurisdiction, without prejudice, Nov. 29, 1872.
367	David & Thomas Harrison.	Cotton seized and sold by United States. Not proceeds received through the Court of Claims.	Dec. 24, 1864	Savannah, Ga.	230,998 63	Dismissed for want of jurisdiction, without prejudice, Nov. 29, 1872.
368	John K. & Edward Cross.	Cotton seized by United States, now pending in Court of Claims.	Dec. 24, 1864	Savannah, Ga.	47,375 33	Dismissed for want of jurisdiction, without prejudice, Nov. 29, 1872.
369	William Tipper & George Taylor.	Cotton seized and sold by United States. Not proceeds received through the Court of Claims.	Dec. 24, 1864	Savannah, Ga.	33,941 86	Dismissed for want of jurisdiction, without prejudice, Nov. 29, 1872.
370	John McLennan	Steamer M. S. Perry, captured by United States steamer Keystone State. No appeal to Supreme Court.	Oct. 14, 1861	At sea	80,000 00	Dismissed for want of jurisdiction, without prejudice, Nov. 29, 1872.
371	Ernest Dronke	Cotton burned by United States Army.	April 9, 1865	Camden, S. C.	185,184 00	Disallowed Sept. 16, 1873.
372	Stephen Watson	Cotton seized and sold by United States. Not proceeds received through Court of Claims.	Dec. 23, 1864	Savannah, Ga.	301,009 24	Dismissed for want of jurisdiction, without prejudice, Jan. 7, 1873.
373	Charles Hill	Cotton seized and sold by United States. Now pending in Court of Claims.	Dec. 24, 1864	Savannah, Ga.	105,501 16	Dismissed for want of jurisdiction, without prejudice, Jan. 7, 1873.
374	Charles Meyers	Cotton seized and sold by United States. Not proceeds received through Court of Claims.	Dec. 24, 1864	Savannah, Ga.	220,736 80	Dismissed for want of jurisdiction, without prejudice, Jan. 7, 1873.
375	Alexan'r Collie <i>et al.</i>	Cotton seized and sold by United States. Now pending in Court of Claims.	Dec. 24, 1864	Savannah, Ga.	4,415,965 34	Dismissed for want of jurisdiction, without prejudice, Jan. 7, 1873.
376	Alexan'r Collie <i>et al.</i>	Cotton burned by United States Army.	— — 1864	Oxford, Ga.	440,580 00	Disallowed Sept. 17, 1873.
377	Edward Pembroke	Steamer Granite City and cargo, captured by United States gunboat Florida. No appeal to Supreme Court.	Mar. 24, 1863	At sea	462,000 00	Disallowed April 10, 1873.
378	Owners of the cargo of Will-o-the-Wisp.	For cargo of the Will-o-the-Wisp, captured by the United States steamer Montgomery. No appeal to Supreme Court.	June 3, 1861	Off Matamoras, Mexico.	55,845 00	Disallowed Nov. 14, 1872.
379	William H. Fisher, <i>in re</i> Minnie.	For vessel Minnie, &c., captured by the United States steamer Lotonia. No appeal to Supreme Court.	April 20, 1863	At sea	£3,876 3 0	Disallowed Nov. 25, 1872.
380	Robert M. Reid	Wines, tobacco, soap, alspice, water-coolers, goods in his store, &c., taken and used by United States Army.	May —, 1864	Fredericksburgh, Va.	\$2,194 50	Award for \$1,033 Feb. 26, 1873.
381	Christopher Atkinson.	Cotton burned by United States Army.	Feb. 17, 1865	Columbia, S. C.	£4,576 0 0	Disallowed Sept. 16, 1873.
382	Peter Bell and William Scott.	Cotton burned by United States Army.	Feb. 17, 1865	Columbia, S. C.	15,794 16 8	Disallowed Sept. 12, 1873.
383	Mary L. Moore	Cotton burned by United States Army.	Feb. 17, 1865	Columbia and Camden, S. C.	2,296 7 6	Disallowed Sept. 16, 1873.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
384	Lemonius & Co.	Cotton burned by United States Army; loss on cotton seized by United States and afterwards restored to claimants. Land confiscated and sold by United States.	Feb. 24, 1865	Camden, S. C. ....	.....	£8,465 9 10	Interest and costs.	Disallowed Sept. 16, 1873.
385	Peter Maxwell.	For bark Empress, captured by United States.	Oct. 15, 1865	Topeka, Kansas. ....	.....	\$5,000 00	And interest	Special award for \$1,782 April 14, 1873.
386	William Bailey <i>et al.</i>	For detention of steamship Labuan by United States.	Nov. 5, 1862	New York City. ....	.....	32,000 00	And interest.	Award for \$37,392 June 23, 1873.
387	John Loft, mortgagee, &c.	Illegal capture and detention of the brig Volant by United States steamer Virginia.	Nov. 21, 1861	Off mouth of the Mississippi.	.....	£1,000 0 0	.....	Disallowed June 30, 1873.
388	John Amy, trustee, &c., <i>et al.</i> , for heirs of M. Gallichan, for T. C. Le Gross, for E. LeConteur, and for J. LeCras.	.....	Nov. 5, 1863	Off mouth of the Rio Grande.	.....	abt 4,750 0 0	.....	Disallowed April 24, 1873.
389	Henry Lafone and John T. Lawrence.	Steamer Sunbeam and cargo, captured by United States steamer State of Georgia, and sold by United States. Steamer Eagle and cargo, captured by United States steamer Octorara, and sold by United States. Steamer Greyhound and cargo, captured by United States steamer Connecticut, and sold by United States. Steamer Lillian, captured by United States steamer Keystone, and sold by United States. Steamer Lucy and cargo, captured by United States steamer Santiago, and sold by United States. Steamer Emma Henry and cargo, captured by United States steamer Cherokee, and sold by United States. Also for the net proceeds obtained for the cargo of the steamer Lillian. No appeal to Supreme Court.	Sept. 28, 1862	Off New Inlet.	\$74,966 74	.....	.....	.....
			May 18, 1863	On the high seas.	35,475 33	.....	.....	.....
			May 10, 1864	On the high seas.	497,858 55	.....	.....	.....
			Aug. 24, 1864	On the high seas.	153,477 26	.....	.....	.....
			Nov. 2, 1864	On the high seas.	268,948 20	.....	Interest and costs.	Disallowed May 10, 1873.
			Dec. 8, 1864	On the high seas.	294,860 01	.....	.....	.....
390	Walter Easton, trustee for J. G. Galbraith, S. J. Redgate, and J. H. Elsworth.	For loss sustained by the illegal seizure of the brig Gezaina Helligonda by United States steamer Pembina.	Dec. 4, 1864	Off mouth of Rio Grande.	.....	£11,704 4 0	And interest.	Disallowed June 20, 1873.
391	Thomas Elliot Angel <i>et al.</i> , owners of the bark Science.	For bark Science and cargo, captured and sold by United States.	Nov. 5, 1863	Off mouth of Rio Grande.	.....	8,825 5 0	And interest from Nov. 5, 1870.	Award for \$45,684 April 24, 1873.

392	A. E. Forwood and James Dorrington, owners of Adela, Forwood.	For steamship Adela, captured by United States steamers Quaker City and Huntsville, and sold by United States.	July 7, 1862	At sea	20,000 0 0	And interest.	Disallowed Sept. 22, 1873.
393	Leech, Harrison & Forwood.	For cargo of steamship Adela, captured by United States steamers Quaker City and Huntsville, and sold by United States.	July 7, 1862	At sea	2,500 0 0	And interest.	Claim withdrawn Dec. 17, 1872.
394	William B. Forwood.	Illegal imprisonment by United States.	Oct. 9, 1861	New York City	5,000 0 0	And costs	Disallowed July 7, 1873.
395	Charles LeQueune et al., owners of brig Dashing Wave.	For brig Dashing Wave, captured by United States steamers Owasco and Virginia, and sold by United States.	Nov. —, 1863	Off mouth of the Rio Grande.	7,354 12 8	Costs and interest.	Disallowed April 24, 1873.
396	Shupson & Pittman.	For part of cargo Dashing Wave, captured by United States steamers Owasco and Virginia, and sold by United States.	Nov. 5, 1863	Off mouth of the Rio Grande.	1,755 18 8	Interest and costs.	Disallowed April 24, 1873.
397	McDowell & Halliday.	And interest on £4,657 18s. 8d. from August 15, 1864.			51 18 8	And int. from Oct. 19, 1871.	Disallowed April 24, 1873.
398	Miller & Mosman	For part of cargo Dashing Wave, captured by United States steamers Owasco and Virginia, and sold by United States.	Nov. 5, 1863	Off mouth of the Rio Grande.	\$451 50	Interest and costs.	Award for \$24,300 June 30, 1873.
399	Ezekiel McLeod, assignee, &c., for Thomas Potts.	For bark Hiawatha, captured by United States steamer Minnesota, and sold by United States.	May 20, 1861	Hampton Roads, Va.	£5,000 0 0		Award for \$1,069 June 30, 1873.
400	Watkins & Leigh, consignees, &c.	For bark Hiawatha, captured by United States steamer Minnesota, and sold by United States.	May 20, 1861	Hampton Roads, Va.	36,439 0 0		Disallowed Oct. 4, 1872.
401	Dalgely, DuCroz & Co., consignees.	For part of cargo Hiawatha, captured by United States steamer Minnesota, and sold by United States.	May 20, 1861	Hampton Roads, Va.	1,600 0 0	And interest.	Disallowed Oct. 4, 1872.
402	Wm. T. Marshall	For part of cargo Hiawatha, captured by United States steamer Minnesota, and sold by United States.	May 20, 1861	Hampton Roads, Va.	2,600 0 0	And interest.	Disallowed June 30, 1873.
403	Thomas Potts	For part of cargo Hiawatha, captured by United States steamer Minnesota, and sold by United States.	June 13, 1862	New York City	1,572 0 0	do	Withdrawn April 19, 1873.
404	Valentine O'E. Connor.	Illegal imprisonment by United States. Tobacco burned and otherwise lost and destroyed, by reason of the United States restraining claimant from removing the same.	June 28, 1862 1863 and 1865	New York City Richmond, Va.	40,000 0 0 45,192 13 9	£5,700 0 0 And interest.	Disallowed Nov. 18, 1872.
405	Jos. Spence and Geo. Fleming, owners steamship Peterhoff.	For steamship Peterhoff, captured by United States steamer Vanderbilt, and sold by the United States; the cost price of said steamship, and profits on freight; and interest on £16,000, at £5 per centum per annum.	Feb. 25, 1863	On the Atlantic Ocean.	20,885 8 6	£5 per ct. per annum, int.	Disallowed May 10, 1873.

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
406	James Wetherell.....	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	On the Atlantic Ocean.	.....	£5,654 3 11	£5 per ct. per annum, int., and costs.	Disallowed May 10, 1873.
407	William Almond.....	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	13,052 6 2	do	Do.
408	Alfred Wilson, <i>et al</i>	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	3,476 8 9	do	Do.
409	Wilson, Bowles & Co., for Ford, Curtis & Curtis.	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	1,763 0 0	do	Do.
410	Joseph Spence	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	2,505 18 11	do	Do.
411	Alfred Lafone	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	622 10 0	do	Do.
412	Charles Stanley Osborne, <i>et al</i> .	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	744 8 10	do	Do.
413	Anna Louch, (Reed, Louch & Co.)	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	221 11 6	do	Do.
414	Frederick D. Frost, <i>et al</i> .	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	219 2 2	do	Do.
415	Thomas P. Austin ..	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	563 0 11	do	Do.
416	James Holgate	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	398 1 4	do	Do.
417	Stephen Jarman & Chas. F. Smith.	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do	.....	419 4 1	do	Do.
418	Stephen Jarman, passenger on the Peterhoff.	Illegal imprisonment by the United States.	Feb. 25, 1863	do	.....	1,000 0 0	do	Do.
419	Robert Bowden, passenger on the Peterhoff.	Illegal imprisonment by the United States.	Feb. 25, 1863	do	.....	7,500 0 0	do	Do.

420	Samuel Redgate, passenger on the Peterhoff.	Illegal imprisonment by the United States.	Feb. 25, 1863	do.....	.....	106,000 0 0	And int. and costs.	Do.
421	John H. Ellsworth, passenger on the Peterhoff.	Illegal imprisonment by the United States, and damages consequent upon the breaking up of his business.	Feb. 25, '63	do.....	{ £20,000 0 0 } { 10,000 0 0 }	30,000 0 0	.....	Disallowed June 4, 1873.
422	Welch, Margetson & Co.	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do.....	.....	2,149 0 2	And £5 pr. ct. per ann. int. and costs.	Disallowed May 10, 1873.
423	George Wilson and Walter Armstrong.	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do.....	.....	352 9 1	do.....	Do.
424	Grant, Brodie & Co.	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do.....	.....	615 8 10	do.....	Do.
425	Hine, Mundella & Co.	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do.....	.....	4,754 3 10	do.....	Do.
426	Ernest Ellsworth	For part of cargo Peterhoff, captured by United States steamer Vanderbilt, and sold by United States.	Feb. 25, 1863	do.....	.....	709 16 5	do.....	Do.
427	Thames and Mersey Marine Insurance Comp'y, (limited.)	For insurance on cargo of the Dashing Wave, captured by the United States steamers Owaseo and Virginia, and sold by United States. Net proceeds received through act of Congress.	Nov. 5, 1863	Off month of Rio Grande.	.....	\$13,125 44	And int. and costs.	Disallowed April 24, 1873.
428	British and Foreign Marine Insurance Company, limited, and John Young and James Bird, liquidators of the English and Scotch Marine Insurance Company.	For insurance on cargo of the Dashing Wave, captured by United States steamers Owaseo and Virginia, and sold by United States. Net proceeds received through act of Congress.	Nov. 5, 1863	do.....	.....	9,648 91	do.....	Do.
429	Edward Bates, M. P.	For steamship Georgia, captured by United States steamer Niagara, and sold by United States.	Aug. 15, 1864	At sea	.....	£25,854 0 0	do.....	Disallowed Dec. 4, 1872.
430	Henry Lafone and John T. Lawrence	Cotton taken and sold by United States. Claim in the Court of Claims.	Dec. —, 1864	Savannah, Ga.	.....	111,149 18 6	Int. and costs.	Dismissed for want of jurisdiction, without prejudice to prosecution of the claim elsewhere, April 19, 1873.
431	John T. Lawrence	For steamer Banshee, captured by United States steamers Grand Gulf and Fulton, and sold by United States.	Nov. 21, 1863	Cape Lookout	.....	\$111,216 65	.....	Disallowed May 10, 1873.
		For steamer Tristram Shandy and cargo, captured by United States steamer Kansas, and sold by United States. No appeal to Supreme Court.	May 15, 1864	At sea	.....	\$530,090 46	And int.	
					.....	418,873 81		

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
432	Henry James Barker, mortgagee, &c.	For steamship Circassian, captured by United States steamer Somerset, and sold by United States.	May 4, 1864	Off the coast of Cuba	.....	£23,200 0 0	& £5 per ct. per ann. and costs.	Award for \$71,428, Aug. 16, 1873.
433	Overend, Gurney & Co.	For the value of the outward freight of the steamship Circassian, captured by United States steamer Somerset, and sold by United States.	May 4, 1862	Off coast of Cuba	.....	10,000 0 0	Interest and costs.	Award for \$30,540 Aug. 16, 1873.
434	James and Richard Martin.	For ship York seized and burned by United States steamers Brussalero and Allatross.	Jan. 18, 1862	Off coast of North Carolina.	.....	\$10,000 00	Interest and costs.	Award for \$11,935 June 30, 1873.
435	William Miller	For real estate confiscated by United States.	—, 1863	Scott County, Ind.	.....	.....	.....	Disallowed Aug. 19, 1873.
436	Samuel Fogg	For illegal imprisonment, and horse and saddle taken from him by United States.	June —, 1863	Mitchellville, Tenn.	\$500 00 350 00	850 00	.....	.....
		Illegal imprisonment by United States.	July 21, 1862	Germantown, Tenn.	2,000 00	.....	.....	.....
		Spinning-frames destroyed by United States Army.	July 21, 1862	Germantown, Tenn.	200 00	.....	.....	.....
		Mules, wagons, calicoes, muslins, cloth, laces, needles, combs, &c., taken by United States Army.	Dec. 15, 1862	Near Holly Springs, Miss.	2,545 00	.....	.....	.....
		One mule and 1 bale of cotton taken and used by United States Army.	May —, 1863	Near Germantown,	438 50	6,633 50	.....	Disallowed May 10, 1873.
		Five mules, wagons, clothing, jewelry, household articles, &c., taken by United States Army.	Aug. —, 1864	Holly Springs, Miss.	1,250 00	.....	.....	.....
		Watch, pistol, saddle, bag of cotton, &c., taken by United States Army.	Jan. —, 1863	Noncomah, Tenn.	200 00	.....	.....	.....
437	Henry Horton	For schooner Adelson seized and sold by United States. No appeal to Supreme Court.	Aug. 13, 1861	Newport, R. I.	.....	4,000 00	And \$4,235 47 interest.	Disallowed Dec. 18, 1872.
438	John Elsworth	For part of cargo Peterhoff captured by United States steamer Vanderbilt and sold by United States. Not proceeds received through United States Supreme Court.	Feb. 28, 1863	On Atlantic Ocean	.....	£373 19 3	And interest.	Disallowed May 10, 1873.
439	Walter Easton trustee, &c., for John Graham Galbraith.	For part of cargo Peterhoff captured by United States steamer Vanderbilt and sold by United States. Not proceeds received through United States Supreme Court.	Feb. 28, 1863	On Atlantic Ocean	.....	5,490 11 2	And interest.	Disallowed May 10, 1873.

440	Robert Sinclair <i>et al.</i>	For part of cargo Peterhoff captured by United States steamer Vanderbilt and sold by United States. Net proceeds received through United States Supreme Court.	Feb. 25, 1863	On Atlantic Ocean.	.....	690 14 7	And 5 per ct. per annum interest and costs.	Disallowed May 10, 1873.
441	Edgley & Watts....	For part of cargo Peterhoff captured by United States steamer Vanderbilt and sold by United States. Net proceeds received through United States Supreme Court.	Feb. 25, 1863	On Atlantic Ocean.	.....	2,515 2 0	And 5 per ct. per annum interest and costs.	Disallowed May 10, 1873.
442	John Riley, manager of insurance company, and assignee of Thomas May.	For bark Springbok captured by United States steamer Sonoma.	Feb. 3, 1863	At sea.....	.....	4,615 2 11	And interest.	Award for \$5,005 Sept. 22, 1873.
443	George F. Cauty.....	Illegal imprisonment by United States. For cargo of Circassian captured by United States steamer Somerset.	Dec. 24, 1863 May 4, 1863	New York City Off coast of Cuba.....	.....	30,000 0 0 46,895 0 0	 And interest.	Award for \$15,700 May 10, 1873. Award for \$133,206 Aug. 16, 1873.
444	Insurance companies and underwriters at Lloyds.	Derricks, harness, drill, shovels, picks, lumber, steel, wagons, and blacksmith's tools taken, used, and destroyed by United States Army.	Summer 1862	Cheatham County, Tenn.	.....	\$8,099 00	.....	Disallowed June 16, 1873.
445	Janet Mason, administratrix of Wm. C. Beattie.	Illegal imprisonment by United States. Illegal imprisonment of her husband by United States.	Nov. 9, 1862 Nov. —, 1861	Nashville, Tenn. Washington, D. C.....	.....	\$15,000 00 10,000 00	.....	Award for \$830 Aug. 19, 1873. Award for \$1,020 Sept. 22, 1873.
446	John Tobell.....	Hats, caps, boots, and shoes taken and used by United States Army.	Oct. 15, 16, & 17, 1864.	Lexington, Mo.....	.....	4,500 00	.....	Disallowed Apr. 14, 1873.
447	Elizabeth Brain, executrix of John Brain.	For schooner James Douglas, found abandoned at sea by United States steamer Monticello, and afterward used by the United States.	—, —, 1862	At sea.....	.....	7,000 00	.....	Disallowed Apr. 3, 1873.
448	William Ivey and John Ivey.	Damage to store-house by United States Army.	May 1, 1863	Raymond, Miss.....	600 00	} 1,783 00	{ And int....	Dismissed without prejudice and for want of jurisdiction March 22, 1873.
449	Catharine Jane Johnson.	One horse, wagon, harness, saddles, hogs, sugar, corn-beef, bacon, cows, calves, kitchen furniture, tableware, &c., taken, used, and destroyed by the United States Army.	.....	.....	1,183 00			
450	Hannah R. Dowling.	24 head of cattle and 400 bushels of wheat, taken and used by United States Army.	Apr. 7, 1865	Buckingham County, Va.	.....	1,400 00	.....	Award for \$610 May 6, 1873.
451	John Reid.....	Tobacco, part of cargo of the Hiawatha, captured by United States steamer Minnesota, and sold by United States.	May 20, 1861	Off Hampton Roads, Va.	.....	\$1,550 0 0	And int.....	Award for \$6,000 June 30, 1873.
452	Jas. Fall and John M. McCulloch, ex-cutors of Charles McEwen.	For detention of schooner Jane Campbell, and cargo and stores used by United States.	Dec. —, 1861	Off coast of North Carolina.	.....	3,260 0 0	And int.....	Disallowed July 18, 1873.
453	George Campbell...							

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
454	Frederic Parr	Timber cut, rails taken or destroyed, rent of farm; sheep, horses, cattle, wheat, corn, bacon, hay, oats, houses, &c., taken, used, and destroyed by confederate army.	1863, 1864, & 1865.	Lamar County, Tex.	\$34,600 00	\$224,600 00	.....	Disallowed Apr. 4, 1873.
455	Donald Fraser	Illegal imprisonment by United States Sugar, cotton, and \$865 in gold taken by United States Army.	Apr. —, 1862	Fort Scott, Kans.	200,000 00	1,997 00	.....	Disallowed Jan. 7, 1873.
456	Catherine Tomney	For being driven from her home, and the death of three of her children from want and exposure, by United States Army.	Aug. 5, 1862	Baton Rouge, La.	25,000 00	25,475 00	And int.	Disallowed Mar. 25, 1873.
457	Henry A. Lewers	Two cows and calves, and household furniture, taken, used, and destroyed by United States Army.	Sept. —, 1863	Clark County, Mo.	390 00	3,390 00	.....	Disallowed Feb. 7, 1873.
458	George Collie	And loss on forced sale of farm.	Feb. —, 1865	Columbia S. C.	3,000 00	418,038 17	.....	Disallowed Sept. 12, 1873.
459	Theodore Andrae	Cotton burned by United States Army.	Feb. 17, 1865	Columbia S. C.	.....	97,782 28	.....	Disallowed Sept. 12, 1873.
460	Daniel K. Stewart	Use and destruction by fire of a tobacco-stemmer, &c., by United States Army.	Oct. 10, 1863	Mayfield, Ky.	.....	13,174 00	.....	Award for \$310 Apr. 29, 1873.
461	Henry R. Smith	Illegal imprisonment by United States.	July —, 1864	Louisville, Ky.	.....	100,000 00	.....	Award for \$1,540 Apr. 14, 1873.
462	Alexander W. Hutcheson	Household furniture, clothing, library, horse and buggy, wine and liquors taken, used, and destroyed by United States Army.	After April 9, 1865.	Near Mobile, Ala.	5,291 00	.....	.....	Withdrawn by her Britannic Majesty's agent Mar. 17, 1873.
463	Robert McKeown	Office furniture, account-books, &c., taken and destroyed by United States Army.	.....	Mobile, Ala.	512 00	55,803 00	And interest at 8 per ct.	.....
464	Francis Carroll	Loss and damage to business.	Mar. 24, 1863	Vicksburg, Miss.	50,000 00	12,500 00	And interest	Award for \$1,467 June 12, 1873.
465	Philip G. B. Dean	Illegal imprisonment by United States on board Deshing Wave.	June 20, 1862	Queen Anne's County, Md.	.....	£10,000 0 0	.....	Disallowed March 6, 1873.
466	Henry Ward	Illegal imprisonment by United States cotton part damaged and part burned by States Army.	Nov. 5, 1863	Off. month of Rio Grande.	.....	500 0 0	Interest and costs.	Disallowed April 24, 1873.
467	Matthew J. Wilson	For loss on bark Hilda, being warned by off. entering blockaded ports by United States steamer Niagara.	Spring 1865	Georgia and South Carolina.	.....	17,911 8 9	Interest and costs.	Disallowed September 17, 1873.
			May 12, 1861	Off Charleston, S. C.	.....	9,151 14 7	Interest and costs.	Disallowed June 26, 1873.

468	George B. Kerferd ..	Cotton destroyed by confederate forces	April 3, 1865	Montgomery, Ala...	.....	4,416 13 9	.....	Claim withdrawn by Her Britannic Majesty's agent December 17, 1872.
469	Charles M. Nairne ..	Wood and lumber taken and used by United States Army.	1863 and 1864	Culpeper County, Va	2,000 00	} \$7,000 00	.....	Disallowed April 7, 1873.
470	Michael Morianity ..	Damage to dwelling, out-houses, trees, &c., by United States Army.	.....	.....	5,050 00		.....	Award for \$715 April 3, 1873.
471	Elizabeth Bennett, executrix of Benjamin Bennett.	Two horses, two mules, and eleven tons of hay taken and used by United States Army.	Nov. —, 1864	Loudoun County, Va.	.....	920 00	.....	Disallowed May 10, 1873.
472	Alex. M. Hannah	Three horses, hogs, sheep, cattle, corn, &c., taken and used by United States Army.	1863, 1863, and 1864.	Culpeper County, Va	1,359 00	} 1,850 00	.....	Award for \$4,050 Aug. 14, 1873.
473	Patrick McAnally ..	Occupation of farm by United States Army.	— —, 1864	Culpeper County, Va	500 00		.....	Award for \$3,201 June 12, 1873.
474	Thomas O'Bannon ..	Cotton, horses, mule, wagon, and dress and undress goods taken, used, and destroyed by United States Army.	1863 and 1864	Florence, Ala. ....	.....	24,438 50	.....	Award for \$1,232 July 31, 1873.
475	Robert Atkin.	Illegal imprisonment by United States Army.	Feb. —, 1863	Landerdale Co., Ala.	2,500 00	} 5,871 40	.....	Disallowed October 3, 1872.
476	Patrick J. O'Mulligan	Osaburgs and cotton yarns taken by United States Army.	.....	.....	3,371 40		.....	Disallowed June 19, 1873.
477	O. P. Blackburne	Two mules and 130 head of cattle taken and used by United States Army.	July —, 1864	Arkansas County, Ark.	.....	4,560 00	.....	Disallowed January 7, 1873.
478	William Bowman	Illegal arrest by United States Army.	Mar. 22, 1862	New York City .....	.....	£11,000 0 0	.....	Award for \$1,600 Aug. 19, 1873.
		Illegal imprisonment by United States Army and the confederate army.	Oct. 4, 1863	Auburn, N. Y. ....	.....	\$50,000 00	.....	
		Illegal imprisonment by United States Army.	— —, 1863	Mississippi .....	.....	396,467 00	And interest	
		.....	Jan. —, 1864	Near Cedar Keys, Fla.	.....	£2,500 0 0	.....	

C.—Schedule of claims presented to the commission by claimants against the respective governments, &c.—Continued.

AMERICAN CLAIMS.

No.	Name of claimant.	Character of claim.	When.	Where.	Amount claimed.	Total amount claimed.	Interest claimed.	How disposed of.
1	First National Bank of St. Albans.	United States Treasury and State bank notes, &c. taken and carried off by the raiders.	Oct. 19, 1864	Saint Albans, Vt....	.....	\$95,402 75	And interest	Disallowed August 19, 1873.
2	Collins H. Hunting-	For illegal imprisonment and wound-	Oct. 19, 1864	Saint Albans, Vt....	.....	5,000 00	And interest	Disallowed August 19, 1873.
3	William Fuller and Erasmus D. Ful- let.	One horse lost, one horse used, and damages to other horses, saddles, bridles, halters by the raiders, and expenses incurred by claimants in pursuing their property.	Oct. 19, 1864	Saint Albans, Vt....	.....	971 75	And interest	Disallowed August 19, 1873.
4	Bradley Barlow re- ceiver, &c., of the Bank of Saint Albans	United States legal tender, State bank bills, and specie taken and carried off by the raiders.	Oct. 19, 1864	Saint Albans, Vt....	.....	96,564 57	And interest	Disallowed August 19, 1873.
5	Marquette Field, ad- ministratrix of Sylvester Field.	Injury to horses, loss of saddles, bridles, and halters taken by the raiders, and expenses incurred by claimant in recovering the same.	Oct. 19, 1864	Saint Albans, Vt....	.....	1,440 00	And interest	Disallowed August 19, 1873.
6	Seth W. Langdon....	730 Treasury notes taken by the raiders from the Saint Albans bank.	Oct. 19, 1864	Saint Albans, Vt....	.....	795 18	And interest	Disallowed August 19, 1873.
7	Joseph S. Weeks....	Money belonging to claimant, taken from the Saint Albans bank by the raiders.	Oct. 19, 1864	Saint Albans, Vt....	.....	302 40	And interest	Disallowed August 19, 1873.
8	Samuel Brock and Jonathan Wether-	State and national bank bills taken by the raiders, and expense incurred in pursuing their property.	Oct. 19, 1864	Saint Albans, Vt....	.....	971 75	And interest	Disallowed August 19, 1873.
9	Aldis O. Drainerd....	Bills, with coupons attached, taken from First National Bank by the raiders, and expense incurred in pursuing his property.	Oct. 19, 1864	Saint Albans, Vt....	.....	555 68	And interest	Disallowed August 19, 1873.
10	Charles F. Everest..	United States coupon bonds taken from First National Bank by the raiders.	Oct. 19, 1864	Saint Albans, Vt....	.....	1,793 08	And interest	Disallowed August 19, 1873.
11	Frederick T. Bush et al.	Redemption of ship Daring by Great Britain at Calcutta.	Jan. 4, 1862	Calcutta, East India.	.....	7,485 24	(Gold) inter- est and ex- change.	Disallowed April 17, 1873.
12	Thomas B. Wales et al.	For detention of ship Tomplar by Great Britain at Calcutta.	Dec. 27, 1861	Calcutta, East India.	.....	7,622 79	And interest	Disallowed April 17, 1873.
13	Oscar A. Burton et al.	Bills of the Franklin County Bank, United States legal tender notes, and other State bank bills taken and carried off by the raiders.	Oct. 19, 1864	Saint Albans, Vt....	.....	99,692 84	And interest	Disallowed August 19, 1873.

14	Lucien B. Clough, administrator of Elias J. Morris- son. Josiah W. Tripp....	For the shooting and killing of E. J. Morrisson by the raiders.	Oct. 19, 1864	Saint Albans, Vt.....	.....	10,000 00	And interest	Disallowed August 19, 1873. }
15		For expulsion from Island of San Juan and consequent loss of lime-quarry, &c. For detention of bark Patmos by Great Britain at Calcutta. As inventor of breech-loading fire- arms adopted by Her Britannic Maj- esty's Government. For interest on goods shipped on ship Daring, detained at Calcutta.	---, 1864	Island of San Juan..	.....	100,000 00	Gold	Disallowed September 16, 1873.
16	Richard P. Buck <i>et al.</i>		Jan. 8, 1862	Calcutta, East India.	.....	10,147 30	Gold	Disallowed April 7, 1873.
17	William W. Hubbell		Mar. 14, 1865	.....	.....	500,000 00	.....	Disallowed November 7, 1872.
18	Francis Curtis and Samuel E. Pear- body.		Jan. 3, 1862	Calcutta, East India.	.....	£88 3 4	.....	Disallowed April 7, 1873.
19	Walter O. Ashley...	Illegal imprisonment by the Johnson Island raiders. Personal clothing stolen by the raiders. Damage to the Philo Parsons, furni- ture destroyed, blankets, money, &c. stolen &c. Damage to passengers on the Philo Parsons in the loss of clothing stolen by the raiders. Damage to owners of cargo of the Philo Parsons by the raiders. Damages sustained by the steamer Island Queen Stock Company by the raiders.	Sept. 19, 1864 Sept. 19, 1864 Sept. 19, 1864 Sept. 19, 1864	On Lake Erie..... On Lake Erie..... On Lake Erie..... On Lake Erie.....	\$1,000 00 100 00 6,625 00 525 00	..... ..... ..... .....	..... ..... ..... .....	..... ..... ..... .....
			Sept. 19, 1864 Sept. 19, 1864	On Lake Erie..... On Lake Erie.....	2,843 52 5,000 00	} \$16,003 52	And interest	Disallowed August 19, 1873.

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D.

Final award of commission.

OFFICE OF THE MIXED COMMISSION ON
BRITISH AND AMERICAN CLAIMS,
UNDER THE TREATY MAY 8, 1871,
Newport, R. I., September 25, 1873.

The undersigned commissioners appointed under the twelfth article of the treaty signed at Washington on the eighth day of May, one thousand eight hundred and seventy-one, between the United States of

America and Her Britannic Majesty, do now make their "final award" of and concerning the matters referred to them by said treaty, as follows, that is to say:

We award that the Government of the United States of America shall pay to the government of Her Britannic Majesty, within twelve months from the date hereof, the sum of one million nine hundred and twenty-nine thousand eight hundred and nineteen dollars, in gold, subject to the deduction provided for by article sixteen of the treaty aforesaid, for and in full satisfaction of the several claims on the part of corporations, companies, or private individuals, subjects of Her Britannic Majesty, upon the Government of the United States, arising out of acts committed against the persons or property of subjects of Her Britannic Majesty, during the period between the thirteenth day of April, one thousand eight hundred and sixty-one, and the ninth day of April, one thousand eight hundred and sixty-five, inclusive; said sum being the aggregate of the several separate awards upon such claims, made in writing, in duplicate, and signed by us or such of us as assented to said separate awards.

And all other such claims on the part of subjects of Her Britannic Majesty against the United States which have been presented and prosecuted for our award, have been and are hereby disallowed or dismissed, in manner and form as will appear by the several separate awards in writing concerning the same, signed as aforesaid.

Certain other claims on the part of subjects of Her Britannic Majesty against the United States were also presented, but were afterward, and before any award was made thereon, withdrawn by the agent of Her Britannic Majesty, as will appear by the record of the proceedings of the commission, kept in duplicate, and which will be delivered to each government herewith.

And we award that all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the government of Her Britannic Majesty, arising out of acts committed against the persons or property of citizens of the United States, between the thirteenth day of April, one thousand eight hundred and sixty-one, and the ninth day of April, one thousand eight hundred and sixty-five, inclusive, not being claims growing out of the acts of vessels referred to in the first article of said treaty, have been and are hereby disallowed; separate awards upon each of said claims having been made in writing, in duplicate, and signed by us or such of us as assented to such separate awards.

And we refer to the several separate awards made and signed as aforesaid, as a part of this our final award—it being our intent that the proceedings of this commission shall have the force and effect named and provided in the seventeenth article of said treaty.

L. CORTI,
RUSSELL GURNEY,
JAS. S. FRAZER,
Commissioners.

E.

Dissenting opinion of Mr. Commissioner Frazer in the Calcutta saltpetre cases. (See p. 49, ante.)

These cases arise out of certain legislative ordinances of the governor-general of India, dated respectively December 21, 1861, and January 3,

1862. By the first of these ordinances the exportation of saltpetre from India was prohibited after that date, except to London and Liverpool, in British vessels, under penalty of confiscation : *provided*, that the prohibition should not extend to cases where permits to export had *previously* been granted.

By the second ordinance the proviso of the first, excepting cases where permits to export had been granted prior to December 21, 1861, was rescinded ; and the article was required to be relanded from vessels in port. The first ordinance was also so modified as to permit the article to be exported in British vessels to *any* port in the United Kingdom.

In the case of *Bush et al.*, the vessel had a permit to export the saltpetre on board before the date of the first ordinance. She continued to load other goods, placing them upon the saltpetre ; and being in the port of Calcutta when the second ordinance was proclaimed, she was not permitted to sail as laden.

In the other cases the saltpetre was laden when the first ordinance took effect, but custom-house permits to export it had *not* been obtained. In each case the vessels were American and bound for the United States. They were, by the ordinances, required to unlade the saltpetre ; but by special arrangement with authorities it was allowed to remain on board, and the vessels waited until the ordinances were rescinded, a period of nearly two months. By this arrangement, it seems that less injury resulted than would have occurred if the saltpetre had been unladen. Damage from Great Britain is claimed for this detention.

The statute of 24 and 25 Vict., chap. 67, seems to have authorized the ordinances in question, not specifically, but by reason of the general power of legislation which it conferred on the authorities in India.

Though Her Majesty was at that time at peace with all the world, yet there existed a reasonable apprehension of speedy war with the United States on account of the recent arrest of Messrs. Mason and Slidell on board the royal mail-steamer *Trent*, on the high seas. This is an element of importance, establishing that the ordinances of the governor-general of India were proclaimed, not wantonly, but as an exercise of authority with a view, *bona fide*, to protection and self-defense, when the danger of war seemed probable.

A diplomatic correspondence concerning these claims ensued between the two governments. The facts were not controverted ; but conceding them, the British government, advised by the law-officers of the Crown, denied all liability, while the American Government very positively asserted it. This alone imparts importance to the question, and suggests that it should receive the most careful consideration.

1. In the absence of treaty stipulations relating to the subject, it is claimed that the facts constitute a just foundation for a claim.

2. That the treaty of July 3, 1815, was violated ; and therefore there arises a national liability for damages.

If the case is within the treaty of 1815 it is, of course, immaterial to determine what should be our award in the absence of treaty stipulations. By the convention of August 6, 1827, that of 1815 was continued indefinitely, terminable on one year's notice, which was never given. This was before the statute 24 and 25 Vict., though I do not deem the fact important.

If by treaty the British government contracted *not to do* that which before it might lawfully and without liability have done, it cannot afterward break its contract without a just liability to answer for the consequences.

Was there, then, a contract by treaty, by the terms of which Great Britain engaged not to do the things complained of?

By the third article of the treaty of 1815, His Britannic Majesty agreed that citizens of the United States might "freely carry on trade between Calcutta, Madras, Bombay, and Prince of Wales Island, and the United States, in all articles of which the importation and exportation to and from *the said territories* shall not be entirely prohibited." The "said territories" can only mean Calcutta, Madras, Bombay, and Prince of Wales Island; for those only were the territories previously mentioned. To carry goods from Liverpool, or elsewhere in the United Kingdom, to Calcutta for sale, would, it can hardly be questioned, be an *importation* to "*said territories*" in the sense of the treaty; so, then, as long as the importation of a given article from Liverpool to Calcutta was not prohibited, it might also be imported from New York by citizens of the United States. In short, American merchants, by that article of the treaty, acquired the liberty to compete with British merchants in supplying the markets of "*said territories*." This is the natural import of the language; and if these claims arose out of similar interference with American *importations* to Calcutta, say the prohibition to unlade an American cargo under a like ordinance, proclaimed after the arrival of the vessel at Calcutta, I can scarcely conceive that a demand for redress would be denied by Her Majesty's government. I think that in such a case the language of the treaty would be deemed too plain to admit of construction. And I cannot but think that as to *importations* to "*said territories*," that language expresses the exact intention of the high contracting parties.

As to *exportations*, it is not, I think, fairly susceptible of controversy that the literal import of the language used concedes to American citizens rights exactly co-extensive with those which relate to importations. If not to prohibit the carrying of an article from Liverpool to the market of Calcutta is to allow that article to be *imported to* Calcutta, in the sense of the treaty; though it seems to me plain that not to prohibit the carrying of saltpetre *from* Calcutta *to* Liverpool is to allow saltpetre to be exported *from* Calcutta. In other words, by the plainest language that could possibly have been employed, the quoted words of the treaty concede to the United States a right to export and import from or to "those territories" alike, unless either as to specified articles shall be prohibited entirely, which is not done if exports be allowed *from* "those territories," or if imports be allowed *to* "those territories."

The question remains, was the taking of saltpetre from Calcutta to Liverpool an exportation of that article *from Calcutta* in the sense of the treaty?

It is admitted in the intelligent argument of Her Majesty's counsel that in some sense the carriage of an article from Calcutta, "whether to a port in the United Kingdom or to a foreign port, is an *exportation*," nor can this be questioned philologically. The word itself includes the former as well as the latter, whether reference be had to its strict sense or its popular use. For proof of this use, indeed, it is only necessary to refer to the very ordinances complained of in these cases, in both of which the word is several times used in that very sense, and certainly without impropriety. It is also used by Earl Russell in the same sense, in his correspondence with Mr. Adams concerning these claims. It is also used in the statute laws of both countries, as well to indicate the carrying of goods from distant colonies or possessions as from countries wholly foreign.

So much for the mere words of the treaty. Looking only at the language quoted, the conclusion would seem to be that Great Britain engaged by the treaty to permit citizens of the United States to export from Calcutta to the United States such articles as she should permit to be exported to the United Kingdom or any other place; *i. e.*, the exportation of which should not be "*entirely* prohibited." But the words of a treaty must be construed with reference to their subject-matter, so as to forward the intent of the high contracting parties, and not defeat it, and so as to avoid absurd results.

Now, the intent of the third article of the treaty of 1815 undoubtedly was to give to the United States the liberty of direct trade with the places mentioned in the East Indies; so that Americans might purchase and sell *there*, and with their own ships transport goods to and from their own country, from and to those places. The mischief sought to be remedied was that the United States Government was previously obliged to supply herself with the products of those places at second hand in the markets of Great Britain, and could only exchange her products with them through the same indirect channel.

Now, it must be seen at once that if the British government reserved to itself the right asserted, (continuing herself to trade there,) then the concession which seemed to be made was a mere delusion and snare to American merchants, giving no right which Great Britain might not withdraw at any moment with advantage to her own merchants at home. In short, she could at will resume the entire monopoly of the trade with her East Indian possessions; for it must be borne in mind that the language under consideration, by virtue of which it is contended that the ordinances in question can be justified, applies quite as well to all other commodities as to saltpetre, and to imports as well as to exports. A treaty stipulation with such a meaning would be worse than an utter nullity.

There are some other clauses found in this article of the treaty which need to be considered. There is the clause usual in commercial treaties, which makes citizens of the United States trading in those places "subject in all respects to the laws and regulations of the British government from time to time established." Of this it is, perhaps, sufficient to say, that it cannot be supposed that such a clause is a reservation of authority to prohibit the very trade which it was the leading purpose of the article to allow. In the language of Earl Russell concerning the same clause, in the first article of the treaty, (letter to Lord Lyons of December 17, 1862,) "it does not mean that the principal engagement itself may be nullified, or may be rendered illusory either in whole or in part * * * but merely that obedience is to be rendered by foreign traders * * * to all the laws and statutes enacted * * * for the ordinary and legitimate purposes of internal government and administration. * * * I have to observe (he adds) that it is a well-known maxim that treaties are to be interpreted in good faith, and in such a manner that they may have their effect and not be rendered vague or illusory." And Mr. Seward's reply (letter to Lord Lyons of January 9, 1863) contains a virtual admission of the correctness of the principle so well stated by Earl Russell.

It may be added that it is impossible to perceive the force of the argument that a year's notice should be given to terminate the treaty, if it was provided that it could be effectually nullified by one of the parties, at will, by an act of legislation.

But there remains a consideration of much greater weight, as I think.

than those which have been alluded to above. Self-preservation and self-defense are sacred rights of nations as well as of individuals; and nothing in a treaty should be taken to have impaired the right of a nation to make prudent preparations for them by husbanding its means of war, when that event seems probable, unless the terms of the stipulation will admit of no other construction.

There is a provision in the article under consideration which shows clearly that the exigency of possible war was distinctly in mind when the treaty was concluded. Indeed, such were the events then existing in the history of both countries that it would have been remarkable if it had not been. The provision is in those words:

Provided only that it shall not be lawful for them, (citizens of the United States,) in any time of war between the British government and any state or power whatever, to export from the said territories, without the special permission of the British government, any military stores or naval stores, or rice.

This exception to the general liberty to trade conceded before, is free from all ambiguity. That it covers only the case of actual war, shows most clearly that it was not deemed important, and was not intended to make any reservation for the case of war merely apprehended. The one thing being expressed, all else is excluded. *Expressio unius est exclusio alterius*. This maxim of interpretation is sensible and sound, and I think never was more applicable in any case than here.

If I have correctly interpreted the treaty, then it is of no consequence whatever that the ordinances applied to all nations alike. A specific engagement definite in its terms can be fulfilled only by the performance of it in all its substantial parts. It is not to be confounded with an engagement to extend only the privileges which shall be allowed to other powers or to the most favored nation.

These considerations seem to me to establish very clearly the validity of these claims, and I am of opinion that damages should be awarded accordingly.

F.

Mr. Commissioner Frazer's dissenting opinion in the case of Henry Henderson vs. United States. No. 410. See p. 49, ante.

Henderson, in whose behalf Great Britain makes this claim, is a British subject by birth, and has taken no steps toward becoming naturalized in this or any other country. He became domiciled near Port Hudson, in the parish of West Feliciana, in 1850, employed in cultivating and dealing in cotton, and has ever since resided there. There is no room to doubt that it was his voluntary and permanent domicile. It is not even alleged that he maintained a personal neutrality during any period of the rebellion, and there is no proof whatever of that fact. In June, 1863, he owned in the neighborhood of 112 bales of cotton. After twenty-seven days of effort by continuous fighting, General Banks, commanding the United States forces investing the fortified town of Port Hudson, held by the rebels, found himself unable to carry the works by assault, and thereupon commenced a regular siege of the place. Cotton found in the neighborhood, including Henderson's, was, without discrimination, seized by the United States forces, and used almost exclusively in the construction of fortifications, a purpose to which cotton in bales

is known to be well adapted in the emergencies of a siege. The officer who took Henderson's cotton gave papers as follows:

Received, Bienvenue plantation, West Louisiana, from the plantation of Jed. D. Smith, fifty-one (51) bales of cotton, by order of Col. S. B. Holabird; seized by order.

T. K. FULLER,

Capt. Seventy-fifth N. Y. Vols., A. A. Q. M.

JUNE 10, 1863.

JUNE 12, 1863.

I have taken, by order of Col. S. B. Holabird, for the United States Government, 133 bales of cotton from the Carmina plantation, West Louisiana.

(Signed as above.)

The fortifications and works of the besiegers were extensive, being equal to a continuous line of over seven miles. After the fall of Port Hudson, the cotton was gathered up, cleaned, and sold, and the proceeds applied to the use of the troops of the United States.

Under these facts the majority of the commission determine that Henderson has a valid claim against the United States for the value of his cotton, and an award is made in favor of Great Britain accordingly.

I cannot join in this award, and the principles of public law involved in it and contravened by it, seem to me so very important and so well settled, that I feel it my duty respectfully to state the reasons which control my action now and may control it in other cases.

1. That a foreigner domiciled in the United States, voluntarily remaining in a hostile part of it, in rebellion against it, that part recognized by the country of his origin as a belligerent, thus choosing to trust himself to its protection, thus being *in law* an enemy of the United States, without even pretending that he was *in fact* neutral, may be recognized as entitled to maintain a claim against it for property appropriated by its invading armies, when no citizen of the United States could under like circumstances claim such consideration, is a proposition to which I must enter an earnest and emphatic dissent. If it has any support in equity, justice, or the public law, then I am greatly in error.

2. The cotton was the property of an enemy of the United States, so recognized by every writer upon international law, and so held by all tribunals, both American and British as well as continental, in every reported case involving the question. The mixed commission, constituted under the convention of 1853, between the two countries, so held in Laurent's case. Indeed, it went further, and held that an unnaturalized Englishman voluntarily domiciled in a country at war with the United States was not even to be regarded as a British subject; thus going a little too far, as I think.

The property of Henderson was as liable to capture as the property of Jeff. Davis himself, or any rebel in arms. I believe this is not questioned. That the property itself was a proper subject of capture on land under the modern rules by which civilized nations govern themselves in war, seems to me to be quite as clear.

The legislation and the known practice of the rebel authorities made it so. They made cotton the basis of their public credit by a policy which aimed to deal largely in it on government account, to purchase it even before it was grown, and hypothecate it as security for the payment of loans, with the proceeds of which they did, to a large extent, supply themselves with arms and munitions of war, and with a fleet of armed vessels to infest the ocean and destroy American commerce. They committed it to the flames, whether owned by friend or foe, rather than permit it to reach the markets of the world otherwise than through their own ports; thus endeavoring by warlike operations to secure to

themselves a monopoly in supplying the foreign demand, that they might thereby constrain nations abroad to aid them in their struggle. In short, cotton was a special and formidable foundation of the rebel military power. It was more important than arms or ships of war, for it supplied these and all else beside. It was more potent than gold, for it not only commanded gold, but it largely enlisted in behalf of the rebels the interests of foreigners whose manufacturing industry was in a measure paralyzed because this staple was needed to keep it in motion. The necessities and purposes of war, therefore, required its capture at every opportunity more imperatively than the capture of munitions and implements of war; indeed, that necessity was quite as pressing and certainly as humane as the killing of men in battle; for it was no less efficient as a means of accomplishing the subjugation of the rebel armies, and re-establishing the national authority. It is to me astonishing if there is a difference of opinion upon this subject.

The Supreme Court of the United States, recognizing to the fullest extent all the limitations which the practice of nations has lately engrafted upon the right of capture upon land, so held in the case of a loyal American widow. (See the case of *Mrs. Alexander's Cotton*, 2 Black.) This is high authority, especially when it is remembered that that august tribunal has certainly exhibited no tendency whatever to give undue license to military authority or warlike operations. Complaint, if any, has been altogether in the other direction. But I would be quite content, in the absence of any authority, to trust the question with the common sense of all civilized nations so long as war in any form shall be recognized as a lawful method of deciding differences. If the capture was rightful by the laws of war, it would be a novelty in international law that its exercise involves an obligation to make compensation.

3. But another point remains, which in my judgement is absolutely conclusive against any award on account of this claim, if the rules of international law should control the determination of the question. Henderson was voluntarily and permanently domiciled in one of the rebellious States, the territory held by the so-called Confederate States recognized by Great Britain as a belligerent. By that act of recognition all British subjects were bound. If they chose to remain in that part of the world, they voluntarily took the chances of war and intrusted their interests to the protection of that organization. They must look to it for protection from the results of war; and now that it has, by the fortunes of war, been exterminated, the country of their origin has no right (save possibly in exceptionally flagrant cases) to intervene in their behalf as against the United States for indemnification. This I think is as clearly established as a rule of international law as anything can be. It was so held in *Laurent's case*, *supra*. It was so declared by the American Secretary of State in reference to the bombardment of Greytown, and was then assented to by the English government under the advice of the law-officers of the Crown. The Attorney-General on that occasion declared in Parliament that *every jurist admitted it*. He said "the principle which governed such cases was that the citizens of foreign states who resided within the arena of war had no right to demand compensation from either of the belligerents." (See *Wheat. Int. Law*, 173—note by Lawrence.) This rule is so much in the interest of the peace of nations that it should be steadfastly maintained. A right to interfere is so intimately associated with the duty of doing so, that any relaxation of this principle would but multiply occasions of war and afford too many opportunities for that armed intervention in the quarrels of others which is sometimes sought, in vain, by ambitious rulers.

G.

Opinion of Mr. Commissioner Frazer in abandoned and captured property cases, No. 225, and others. (See p. 49, ante.)

The capture or destruction of property on land belonging to individual enemies is justified by the modern law of nations, if there be military reasons for it; in the absence of good military reasons such captures are generally without the support of the public law. When such reasons do exist, such capture or destruction is, in the nature of things, quite as proper as the capture or destruction of such property on the high seas.

The latter is maintained because an enemy's commerce and navigation are "the sinews of his naval power," to take or destroy which is, therefore, a legitimate act of war. (Wheat. Int. Law; Lawrence, 626.)

"The sinews" of his *military* power on land must, in view of the natural law, be equally the subject of capture or destruction by an invading army. Cotton was held to be such by the Supreme Court, in the case of *Mrs. Alexander's cotton*, (2 Wall., 404.) The reasoning of the opinion of the Chief Justice in that case is, I think, unanswerable.

The war of the American rebellion was a civil war—an immense one, too, and the Government had all the rights of war which it would have had if its enemy had been an independent nation. Even the rebel organization was recognized by Her Majesty's government as a belligerent, *i. e.*, having the rights of war; and certainly that government is thereby estopped from denying, and, indeed, never has denied, that belligerent rights also belonged to the Government of the United States. Every act of war recognized as lawful by the public law between independent states at war was, therefore, lawful on the part of the United States, and involved no cause for reclamation on the part of neutrals. On this ground only, as a lawful belligerent act, could a blockade be maintained. The subject is discussed very fully by the Supreme Court in the *Prize Cases*, 2 Black; and I think the reasoning of that court is conclusive.

Neutral's property in the enemy's territory stands exactly on the same footing as any other property found there. Indeed, a neutral domiciled there is an enemy in view of the public law. He may be compelled to serve the enemy as a soldier even, and his property must contribute to the support of the enemy's hostile operations without reference to his national character. I think that all authorities, British, continental, and American, are in accord upon the proposition that the belligerent right of capture of movable property on land is in no respect affected by the nationality of its owner.

Whatever is lawfully done in the exercise of belligerent rights cannot involve any liability contemplated by the treaty; it cannot possibly be a tort.

The belligerent right of capture must not be confounded with the right of eminent domain, which is a civil right exercised in virtue of sovereignty. The two are wholly distinct and rest upon different grounds.

Grant's case, (C. Cls., 1863,) cited by Her Britannic Majesty's counsel, was not a destruction of enemy's property; it was not in the enemy's lines, nor in a seceding State. It was a destruction of property in Arizo, within actual possession of the United States, to prevent its falling into the enemy's hands, and by the Constitution of the United States compensation for it was secured, and this only did the court decide.

But are we to be told that the Government of the United States is compelled by its Constitution to pay its rebellious citizens for their

property destroyed as a lawful, *belligerent* act? Has its Constitution thus tied its hands as against a rebellion? Might the rebels, without liability, exercise all recognized belligerent rights against it, including the capture of the property of British subjects found in the loyal States, and yet it do the like only subject to the duty of making compensation?

From all this absurdity there is no escape if the belligerent right of capture and destruction shall be confounded with the sovereign right of eminent domain. And indeed captures on the high seas must then go into the same general category.

In fine, a constitutional provision—the condition of compensation for property taken for public use—intended only to restrain civil administration, would be held to so trammel belligerent rights in time of civil war that effective hostilities against rebels might sometimes be practically impossible.

Now, Congress saw that the full exercise of the belligerent right of capture on land was, as to cotton especially, of the greatest military importance, and that such capture would, therefore, be extensive, and that it would fall alike on the loyal and the disloyal citizen, and also upon foreign residents in the South who had not actually violated any duty. It was a generous policy to mitigate calamities which a war thus lawfully conducted would nevertheless impose upon persons guilty of no actual wrong. If the capture was a lawful act of war, to restore a portion of the proceeds would be an act of grace and generosity constituting no foundation for a claim for more; and if a particular mode was at the same time provided, whereby this partial restitution might be sought, that mode only could be resorted to. The right generously given and the mode of seeking it must go together.

The act concerning captured and abandoned property, allowing loyal persons to recover in the Court of Claims, was just this act of grace. (Anderson's case, 9 Wall., 56.)

My conclusions are:

1. Capture of cotton of British owners within the rebel territory was not wrongful by international law.
2. It was not wrongful under the act of Congress.
3. It was a belligerent right, and not the civil and sovereign right of eminent domain.
4. Without the act of Congress no compensation was due.
5. Only such liability as the act of Congress imposes exists, and it must be sought in the mode prescribed by the act.

Again, it is a principle of international law established by the practice of all civilized states, and sanctioned by every consideration of expediency and justice, that where a nation has provided an adequate municipal remedy by judicial proceedings for wrongs done by it to foreigners domiciled within its jurisdiction, as well as to its own subjects, no international reclamation can be made, at least until this municipal remedy has been exhausted.

Upon this principle, also, this commission should make no award in this class of cases. The Court of Claims was open to these claimants, with jurisdiction to give them reasonable compensation for captures of cotton. There citizens of the United States must go for relief within the time limited by act of Congress; and I cannot assent to the proposition that domiciled aliens have a better claim than citizens.

I would not be understood to hold that the right of capture of enemy's property on land, as recognized in recent times, is as broad as it is at sea. The military reason for it must be more palpable and immediate. There is a remote possibility that to take the lives of non-combatants—

enemies—may weaken the enemy, for these might be forced into the armies of the enemy; so, too, as to an *indiscriminate* capture or destruction of private property. But all this is condemned by the modern law, and I would shudder to countenance a revival of practices so horrible.

I admit, too, that there may be difficulty in defining the precise limits of the right of capture on land. It cannot be doubted that it may be as broad and general as the practice of the enemy in that regard: for retaliation is fully justified by institutional writers, and by the practice of all nations.

So I suppose it would not be questioned that arms, munitions of war—commissary and quartermaster's supplies, intended for sale to the enemy, might be captured or destroyed. So, too, private manufactories intended to furnish arms to be sold to the enemy, &c., &c. This enumeration might be extended.

I feel safe in asserting that no nation in christendom has practically abandoned the right to capture and destroy in all such cases. It is a direct blow at the military power of the enemy.

So if an enemy banker has engaged to supply the enemy government with money, may not the cash in his vaults for that purpose be captured?

This, too, would be a *direct* blow at the sinews of his military power, quite as effective and not less humane than taking of life in battle.

H.

Opinion of Mr. Commissioner Frazer in the case of John H. Hanna, vs. The United States, No. 2. (See p. 58, ante.)

This is a claim for the destruction of 819 bales of cotton belonging to the claimant by rebels in arms against the United States. The property was destroyed in Louisiana and Mississippi in 1862 by the confederate forces with the concurrence of the rebel authorities of Louisiana, one of the Confederate States so called. Her Britannic Majesty had recognized the so-called Confederate States as a belligerent and the contest of arms then prevailing as a public war. After such recognition by the sovereign, the subject of such sovereign cannot, in his character as such subject, aver that the fact was not so. The act of his government in that regard is conclusive upon him.

Aside from this recognition by Her Majesty, it is public history of which this commission will take notice without averment or proof, that the confederate forces were engaged at the time in a formidable rebellion against the government of the United States. It may not be important to the question in hand, therefore, that Her Majesty had taken the action already stated.

It should be further observed that the particular "State of Louisiana" which concurred and participated in the destruction of the claimant's property was a rebel organization, existing and acting as much in hostility to the Government of the United States as was the Confederate States, so-called. It was in form and fact a creature unknown to the Constitution of the United States, and acting in hostility to it. It was an instrumentality of the rebellion. Its agency, therefore, in the spoliation of this cotton cannot be likened to the act of a State of the Ameri-

can Union claiming to exist under the Constitution; and any argument tending to show that under international law the national government is liable to answer for wrongs committed by such a state upon the subjects of a foreign power, can have no application to the matter now under consideration. The question presented is simply whether the Government of the United States is liable to answer to a neutral for the acts of those in rebellion against it under the circumstances stated, who never succeeded in establishing a government. It is not deemed necessary in this case to inquire whether the claimant, having a commercial domicile in Louisiana at the time, is to be deemed a British "subject of Her Britannic Majesty" in the sense of Article XII of the treaty which creates this commission. That question is argued by counsel, but it is thought better to meet the question above stated for the reason that the case will thereby be determined more distinctly upon its merits.

The statement of the question would seem to render it unnecessary to discuss it. It is not the case of a government established *de facto*, displacing the government *de jure*. But it is the case merely of an unsuccessful effort in that direction, which, for the time being, interrupted the course of lawful government without the fault of the latter.

Its acts were lawless and criminal, and could result in no liability on the part of the Government of the United States.

I.

Mr. Commissioner Frazer's dissenting opinion in the cases of Mrs. Sherman, No. 359, and Mrs. Brain, No. 447. (See p. 62, ante.)

This is an international court, and the parties litigant before it are *nations*, not *individuals*.

But the treaty limits the jurisdiction of this tribunal. Not *all* matters of difference between the two governments have been submitted to the award of this commission, but only certain "claims on the part of" their respective citizens or subjects, against the other government. The correspondence which led to the treaty clearly shows that this means "*claims of*" the citizens or subjects of either government, against the other government. (Sir Edward Thornton to Secretary Fish, February 1, 1871, and Mr. Fish's reply of February 3, 1871. See Protocol I.)

There must, then, be an *individual* who has a *claim*, and a British or American nationality, else we cannot take jurisdiction.

When the party whose person or property has suffered injury is dead, how are we to ascertain who *then* has such claim? The international law is silent, giving no answer to this question. It is a matter regulated by municipal law, and the law of the *domicile* of the deceased must be referred to to ascertain who takes the rights which he had while in life; that is to say, to ascertain who is the individual "citizen or subject" in whose behalf a claim exists after the death of the original claimant. If by the municipal law of the *domicile* of the deceased *nobody* is entitled, then by this treaty we cannot make an allowance; for we can only do that where there is an *individual*, British or American, who has a claim. We have no authority to create a claimant. The treaty *might* have provided for such cases, but it did not. It might have provided that proper damages should be awarded against our government in favor of the other, for the wrong to the nation, without reference to any question of the right of an individual to such damages, leaving the government in

whose favor the award should be made to determine, as it might see fit, what individual if any should be benefited thereby.

The treaty of the United States with New Granada, and that with Mexico, referred to in the argument, were of this character.

Where the personal injury was to one domiciled either in the United States or Great Britain and now dead, there can be no citizen or subject entitled to make claim; because, by the laws of both countries, the right to damages is extinguished by the death of the person injured.

K.

Opinion of Mr. Commissioner Frazer in the case of John C. Rahming, No. 7. (See p. 64, ante.)

Conceding that in this case there must be an award of damages, yet I do not agree that it should be large.

When the American rebellion began he was domiciled at Nassau, and so continued until June 13, 1861, when he removed to New York, having made his arrangements for that purpose the previous year, (his deposition, p. 37.)

The rebellion was not hatched in a corner. The firing upon Fort Sumter was not a surprise. For many weeks prior thereto, it was known all over America and Europe that elaborate preparations were being made for the attack. It was virtually under siege for weeks before a gun was fired, its supplies cut off, and fortifications for attack being built. This is public history. It is not pretended that this was not known in Nassau. Arms of all kinds were sought and in demand in the South. This claimant was at that time willing to supply that demand, and for the sake of profit to put in Wilmington two cannon which he owned, to be used to destroy the Government whose hospitality he intended in a few weeks to accept. One of his explanations of this is that, when so intending in April, 1861, he did not know that firing upon Sumter had really yet begun! This was his statement to Consul Archibald, (memorial, p. 17,) in September, 1861. It is possible that the consul did not give his statement correctly. But in December, 1872, he plainly means to be understood that at that time (April, 1861) he "got news" for the first time that there was "*likely to be war*," and therefore he did not send the guns to Wilmington! (his deposition, p. 48.) It overtaxes credulity to be expected to believe that an intelligent merchant at Nassau did not learn, long before April, that there was "likely to be a war."

On September 2, 1861, the Government, being informed merely that he had attempted to have the guns shipped from Nassau to Wilmington, and, so far as we know, not learning that he was at the time a resident of Nassau, and that it was probably before there was actual war, had him arrested. Learning the facts as stated by the consul, he was promptly released after sixteen days' detention.

The Government had learned enough to have made it almost criminal not to be afterwards suspicious of Rahming. He had been willing to supply the rebels with arms. He was trading ostensibly with Nassau, notoriously a mere way-station for goods intended for the rebels. He had a trading-house there. He was in business correspondence with, and sending goods to persons there known to be in the confederate

trade. He was suspected and watched. It would have been wicked negligence not to have watched him. Packages shipped by him were found on board a confederate vessel captured in attempting to violate the blockade—the “Margaret and Jessie.”

Domiciled now in New York, he could not lawfully aid the insurgents by trading with them either directly or indirectly, even in the absence of a blockade and an act of Congress prohibiting it. He was now in that respect bound by all the duties incumbent on American citizens. He must restrain his avarice—forego profit for the sake of the country in which he resided.

Non-intercourse between belligerents rests upon a principle of public law, and needed no act of Congress or public proclamation to establish it. Trade with the enemy indirectly, *via* Nassau, was notless a violation of this principle than *direct* trade. If there was probable cause to believe him guilty of this, his arrest was fully warranted. If he so conducted his business as to create this belief, tempted thereto by the hope of gain, he must submit to the consequences naturally resulting from it. He had abundant notice that he was suspected, and this should have put him on his guard.

December 31, 1863, he was again arrested, and was held six months and two days. Was there probable cause for this arrest? It must not be forgotten that it occurred immediately after the hearing and decree in the case of the “Margaret and Jessie,” in which it appeared that cases shipped by Rahming were on board, the marks unchanged, and that the Government acted and must have acted upon what *then* appeared, not what *now* appears.

To recapitulate:

1. Two years and a half before, he had shown himself willing, for gain, to aid even in arming the insurgents.

2. Having a house of trade at Nassau, he had opportunities, nay, excellent facilities, to participate in the confederate trade.

3. His business ostensibly with Nassau was large.

4. Much of the goods shipped by him were adapted to the confederate demand.

5. Some of his shipments, it appeared, were actually found on board a ship sailing under the confederate flag *en route* to Wilmington.

One might well inquire what more was needed to constitute probable cause for his arrest.

Nor am I yet satisfied of his innocence. His own deposition, if fully credited, ought perhaps to be deemed a sufficient explanation of nearly everything. But I cannot accord full credit to his statements. He furnished abundant reasons for (at least) caution in this respect. He made his memorial under oath, stating when certain vessels were detained, to his injury, viz, the Prince Alfred, in May, 1863, and the Star of the West, in June. In his deposition he places the first event sixteen months earlier, and the last eleven months earlier. The explanation is that these errors must have been either *clerical* or *typographical*. That they are not typographical appears by our files. Then we have his positive and unnecessary affidavit in bankruptcy that he is an American citizen, and his explanation that he did not read the affidavit! The least that can reasonably be said of these explanations of his is that he is not *careful* as to *what* he shall swear to; an oath being by him regarded as imposing upon the conscience no obligation to know what it is that is affirmed. What would become of the administration of justice if all men were thus careless?

His explanation of the marks on cases found on board the *Margaret* and *Jessie* leaves something more to be desired. It is not very probable that a steamship running the blockade would be laden, to any extent, with *empty* barrels and boxes; and where merchants use old cases in which to pack goods, they mark them *anew*. The old marks, it is true, sometimes remain legible, but the *Margaret* and *Jessie* had on board several cases with only the marks of Rahming's consignees. It hardly explains this to say that his Nassau house was in the habit of selling their *empty boxes for what they would bring*, unless we are also to suppose that when the same cases were afterwards found in the confederate steamship they were empty!

In short, I am not sure that it was not to him a great favor that he was discharged without a trial.

His complaints of harsh and inhuman treatment in prison, other than would ordinarily attend secure imprisonment, are, I think, sufficiently met by the evidence for the defense.

But I think that he was detained too long; that he was reasonably entitled to either trial or discharge earlier.

L.

Opinion of Mr. Commissioner Frazer on the effect of failure of claimants to take and prosecute appeals in prize cases. (See p. 90, ante.)

Upon the question whether a claim can now be maintained before this commission for vessels and cargoes, or either, captured and by the proper courts of prize condemned as lawful prize, and no appeal prosecuted from the judgment of such courts, there being nothing in the circumstances to hinder or embarrass the claimant in prosecuting such appeal, I have reached a conclusion in the negative. The reasons which have led me to this opinion I put in writing for the consideration of my learned colleagues, with the remark that, if I am wrong, I shall gladly yield whenever it is shown.

"Justice and equity" constitute the rule of our decision by the terms of the treaty. This is the foundation of international law, and when that law speaks upon a question, we must be guided by it; for both countries, as well as the nations of Christendom, recognize its principles as equitable and just; and we shall be wholly at sea with no guide, and disappoint both governments, if we disregard it. If by the international law there is no valid claim in such a case, then I know not how its validity can be maintained. True, the treaty confers upon us *jurisdiction* of such claims, because it refers them to this commission. The question in hand is not of *jurisdiction*, but it is whether the cases as stated in the several memorials constitute claims which ought to be allowed. I do not doubt the jurisdiction, but that does not determine their *validity*. It only makes it our duty to decide whether they are valid or not; and that decision should be according to the principles of international law.

So far as I know, the approved writers upon international law are in accord upon this question.

Thus Rutherford :

Natural equity will not allow that the state should be answerable for their (the captor's) acts until those acts are examined by all the ways which the state has appointed for the purpose, (2 Inst., book 2, c. 9, § 16.)

And again.

The subjects of a neutral state have no right to appeal to their own state for a remedy against the erroneous sentence of an inferior court till they have appealed to the superior court, or to the several superior courts if there are more courts of this sort than one, and till the sentence has been confirmed in all of them. For these courts are so many means appointed by the state to which the captors belong to examine into their conduct; and till their conduct has been examined by all these means, the state's exclusive right of judging continues. (*Id.*)

Wheaton, (Lawrence's ed.,) p. 675, says that "the neutral has no ground of complaint" until the acts of the captors are confirmed by the sentences of the tribunals appointed by him to adjudicate in matters of prize, what he suffers being the inevitable result of the belligerent right of capture;" and cites Rutherford at length in his text.

On the 7th March, 1862, Sir Roundell Palmer, solicitor-general, declared in a debate in Parliament that it was the ordinary law of nations, than which "nothing is better known," that the neutral must not interfere except by appeal, if the first decision in prize is deemed wrong. (Law. Wheat., 680 n.)

An English commission in 1753, in a report concerning reprisals by Prussia for captures by Great Britain, said, concerning adjudications in prize, "If no appeal is offered, it is an acknowledgment of the justice of the sentence by the parties themselves, and conclusive." (Wheat., Hist. Law of Nations, 210; see also, Wheat., Int. Law, (Lawr., 678.)

Wildman seems to adopt this language as expressive of the rule of international law. (Inst., vol. 1, p. 353.)

Governor Lawrence, the learned editor of Wheaton, in a letter of date May 21, 1871, published in the World newspaper, concerning this very treaty, before its ratification by the American Senate, speaking of this commission and the character of claims which it could allow consistently with principles of public law, said:

So far as regards maritime prizes, it is a well-recognized principle that no claim can be made on the government of the captor till all the remedies provided through the prize courts have been exhausted. (Pamphlet, pp. 28, 29; see also, Law's note 66, to Wheat., Int. Law, 189.)

Opposed to this uniform and unbroken current of authority, English and American, Her Britannic Majesty's counsel cites only a single case, which it is urged should outweigh all the text-writers. The case cited (bark Jones—American and British commission under treaty of 1853, p. 83,) was not a prize of war. It was a capture of a supposed slave-trader made under British statutes. The capture was made at St. Helena, where there was a court of record having jurisdiction, but the vessel was taken to Sierra Leon, a distance of one thousand miles, for adjudication. She was acquitted of the charge, and it was adjudged that there was *no probable cause for seizure*. But the court assessed her with costs for "resistance of the master to fair inquiry"—a personal matter of which the court had no cognizance under the statute. There was no appeal. These are the circumstances under which Judge Upham was of opinion that the owner was not bound to take an appeal. He seems to have deemed the judgment for costs *coram non iudice* and utterly void. It further appears that the master did not know where to follow his vessel, and was deprived of all means of following it, (p. 101.) He did not appear in court. How could he if such were the facts? Judge Upham, the American commissioner, might well hold that under *such circumstances* an appeal *was not* necessary to perfect the right of the American Government to demand redress.

The opinion of Judge Upham seems to imply that in the absence of *special circumstances* an appeal would be necessary.

The opinion of Mr. Hornby, British commissioner, is silent upon the question of appeal; and indeed it is difficult to see, from his opinion, (p. 107,) upon what ground he could have consented to award any damages unless it was that claimed by Judge Upham—that the court had no jurisdiction under the statute to adjudge costs against the vessel for the alleged personal misconduct of the master. He was willing to allow for detention of the vessel and damages to her, and sacrifice on cargo.

The umpire expressed no opinion upon the question of appeal.

The case was peculiar, and I do not deem it an authority applicable to the general question under consideration. General rules can never safely rest upon the precedents of exceptional or hard cases. That there should be some exceptions to the general rule as I deem it to be, I have no doubt. For instance, if, as in the case of the *Jones*, an appeal was rendered very difficult or impossible, or was embarrassed, by the act of the captors; or if previous appeals in similar cases had shown that the appellate tribunal of last resort did not govern itself by international law, thus indicating that an appeal would have been useless, or if it had been waived by the government of the captor, I would hesitate long before holding that appeal was necessary to lay the foundation for an international claim.

But it is suggested that the text-writers cited are considering only the grounds of war or reprisals, and not the causes adequate to justify a claim for indemnity by one nation against another. I can only say that I think this is a mistake. Besides, their reasoning, if correct, is absolutely conclusive against both. If, as Rutherford asserts, “natural equity will not allow that the state should be answerable,” or “if the subjects of the neutral state have no right to appeal to their own state for a remedy against the erroneous sentence;” or if, according to Wheaton, “the neutral has no ground of complaint,” and what he suffers is only “the inevitable result of the belligerent right of capture;” or if, according to Wildman, a failure to appeal is “an acknowledgment of the justice of the sentence;” or if, according to Lawrence, “no claim can be made on the government of the captor,” then I know not upon what ground it can be held that these claims can be sustained upon the facts as alleged.

But reprisals are justified by the public law for refusal to repair an injury, and when it is admitted that reprisals cannot be made, it is thereby confessed that there is no just international demand.

Granted a just claim or injury recognized by the public law, then by that law the state aggrieved is the exclusive judge of the mode of redress.

The note of Mr. Seward of December 22, 1862, concerning the case of the *Will-o'-the-Wisp*, (No. 378, p. 30,) has been referred to. Was this either a waiver of appeal in that case, or the expression of an opinion that an appeal was not necessary? That note does not stand alone. The reply of Lord Lyons (pp. 30, 31) seems to recognize that as a matter of right the United States might stand on the absence of an appeal; but it makes an appeal to the magnanimity of the American Government in the particular case. Mr. Seward's answer thereto of April 2, 1863, gives distinct notice that the appeal is not waived, and that it is deemed necessary before the executive government can be called upon to consider the subject.

M.

Mr. Commissioner Frazer's opinion in the "Rio Grande" cases. (See p. 110, ante.)

1. The remarks made in the general argument for the claimants urging that claims of this character were intended to be referred to this commission by Article XII of the treaty, seem unnecessary, inasmuch as our jurisdiction of the cases is not questioned, and cannot be.

If it is intended to infer that there must be an *award of damages*, from the fact that there is *jurisdiction*, I cannot admit the inference. *Jurisdiction is merely the power to hear and decide*, and necessarily involves the duty of deciding favorably or adversely as the circumstances shall warrant.

2. In like manner the somewhat extended remarks of the general argument to establish that *bona fide* trade with the Mexican port of Matamoras was not a violation of the blockade, and could not lawfully be reached by the blockade, may be put out of the case. No such thing was ever, for a moment, pretended by the United States. If, however, it is intended to suggest the inference that damages must be awarded for these captures because it was adjudged that these vessels were in fact engaged in that *bona fide* trade, then I deny the inference. The reason is a good one for discharging the vessel, but it has little to do with the question whether damages should be given. That depends upon the inquiry, was there good *apparent* cause for making the capture.

3. In view of the instructions to the blockading fleets, (satisfactory to Lord Russell,) of the contemporaneous disavowals of Mr. Seward, and of the uniform decisions of the American prize courts, there is no warrant for the assumption (p. 21) that "these captures were intended to affect the trade between Great Britain and Mexico."

4. The doctrine that this commission may, by its decisions, disregard the law of nations, in deference to whatever undefined notions of "equity and justice" the several members of the commission may happen to entertain from time to time, is to me a very great surprise. It brings to mind the remark of an eminent English law judge, resisting the establishment of the jurisdiction of the courts of equity in that country, to the effect that decisions in equity depended upon the individual conscience of whosoever happened to be chancellor, and were therefore as uncertain as the length of the chancellor's arm or foot! From such equity as that he might well have wished the deliverance of his country. The injustice of his reproach is, however, seen in the fact that "equity follows the law"—abides by it—not only obeys but maintains it, and administers justice according to a system of known and established principles sanctioned by precedent; that it does not depend upon the individual conscience of the judge.

What is the law of nations which it is insisted this commission may disregard? All definitions of it are in accord, substantially, and none of them better than Blackstone's, "that which regulates the conduct and mutual intercourse of independent states with each other by *reason* and *natural justice*." It is the natural law applied to nations in their relations with each other, so far as they have consented that it shall be thus applied. It is wanting in some of the essentials of strict law, however; it is not prescribed by a common superior, and its only sanction is the public opinion of Christendom. Nor is it a complete code having an established rule for all questions that may arise. It is

yet in the period of its growth; but whenever it does speak it utters the rule which the wisdom of the nations has by common consent found to be most in consonance with reason and natural justice. When it gives a rule for the government of a given case, it furnishes the full measure of international obligation in that case—is the only standard by which conduct in that case can be properly tested. In other words, it ascertains what is “equity and justice” between nations.

If seeking to pay a compliment to the eminent men who negotiated the treaty, I think one would hardly choose to say, “they authorized the mixed commission at will to substitute for the rules of right which have been sanctioned by all Christian powers and the courts of both countries the individual notions of the Commissioners thereafter to be chosen.”

The application sought of the proposition alluded to is, in substance, that, though the facts before the prize-court fully justified its judgments, according to the international law as even the British courts would themselves declare it to-day, yet this commission may, upon some imaginary ground of equity, be bound nevertheless to award damages! I can only say that no such result can occur here, except over the most emphatic and decided dissent with which I can oppose it.

The *Science* (No. 391) was found at anchor in the roadstead outside the mouth of the Rio Grande, within less than a marine league of the Texas shore, which was blockaded. Her outward cargo, then discharged, had consisted in part of confederate grey cloth, (290 bales.) She was, in fact, consigned to Matamoras, and really had discharged her cargo there. Matamoras was forty miles up the river. The Texas shore was accessible and less than two and a half miles distant. Captured November 5, 1863; had been there since August 12.

The *Dashing Wave* (No. 395) was found at anchor near the *Science*, but further within American waters. No part of her cargo was war material. There were, however, two boxes (£12,000) of gold coin, £7,000 of which belonged to one Caldwell, whose nationality was unknown, but it is evident he was not British. It appeared from papers on board that at his request Lizardi & Co., British merchants, shipped it as theirs, the bill of lading (p. 193) containing the unusual recital that it was “all British property.” She had discharged no part of her cargo. Caldwell had requested this shipment to be made by Lizardi & Co., as their property, in their name, with £5,000 to be advanced by them to him, if their consignee at Matamoras approved of proposed investments of it. He had specially requested that it be insured, “including the war risk,” (p. 200.) She was, in fact, bound for Matamoras.

Caldwell made no claim, but a claim was made on behalf of Lizardi & Co. for the whole £12,000, averring that “no other persons are interested therein,” and sworn to by their attorney. Also, in the same behalf and to the same broad extent, by Armando Brothers, to whom the consignee had indorsed the bill of lading.

The *Volant* (No. 388) was captured in American waters, the same as the *Science* and *Dashing Wave*, loaded by same brokers who loaded the *Science*, and had confederate gray cloth, (15 bales,) being balance of invoice sent by *Science*. The remainder of her cargo was blankets, shoes, and woolen stockings, and brandy. She had not discharged her cargo. The invoice on board described the cloth (p. 73) as four bales *blue mixed*, one *dark mixed*, ten *sky blue*. It seems that the whole was mixed, no *sky blue* whatever. The manifest showed boots, but no shoes.

The *Sir William Peel* (No. 243) was captured at the mouth of the Rio Grande, in Mexican waters. She had been there about three months.

Her cargo, as per manifest, had been mostly discharged at Matamoras, and she had taken 904 bales of cotton, part of her return cargo. She had two 25-pound guns mounted, considerable ammunition, small arms, tomahawks, cutlasses, &c., for boarding, engines six feet below water line. Burden, 1,044 tons. Signal lights were on her at night.

A confederate officer, it was sworn, claimed to have received arms from her, landed on the coast of Texas at night; and this was not contradicted, though there was opportunity. There is other strong inculpatory evidence, which is, however, contradicted; tending to show both the inward and outward cargoes to have been confederate property.

The question in all these cases is, whether or not there was probable cause for capture. The cargo of each of them was adapted to the Texan market; and there is little doubt that it was expected ultimately to find sale there, whether first to enter into the general stock of Matamoras, or merely to observe the form of passing through that place in transit to Texas.

It seems from the evidence that merchandise unladen at the mouth of the Rio Grande for Matamoras was conveyed to the latter place either in small steamers by the river, or in wagons by land. It seems, also, that this land transportation by wagons was likewise practicable on the Texas side from the coast at the mouth of the river.

It was a matter of notoriety that enormous supplies of military as well as other goods for consumption in the confederacy had been introduced through Texas *direct*, until the blockade of that coast was made effective, and afterwards through Matamoras. It was equally notorious that there was in Texas a great demand for such goods when these vessels were seized; and that it was the policy of the rebel authorities to ship cotton abroad rather than sell it at home.

These considerations are mentioned to show the strong temptations which existed to introduce goods, and especially arms and ammunition, (which could not go through Matamoras,) into Texas *direct*. And if accomplished it would avoid Mexican custom-house scrutiny, duties, charges and detentions, and all the inconveniences which flow from circuitous and indirect methods.

Inasmuch as watchful Federal cruisers were present almost constantly any attempt by day to put goods upon the Texas shore would have been too hazardous for probable success. If done at all, it must have been under cover of darkness, and in small quantities at a time, and by the use of small boats. This would consume time, and would be greatly facilitated by nearness of the ship to the Texas shore.

"The Science." The foregoing observations apply in all these cases. With a burden of only 300 tons, the length of her visit (nearly three months) was of itself remarkable. She had the strong temptation to violate the blockade, and she had placed herself so near the Texas shore that she had the opportunity to do it. These circumstances of suspicion she created, and did not explain. If a ship may thus put herself so near a blockaded shore for months, where, under cover of the night, she can land her cargo upon it, and this without any peril or cause of suspicion, then, indeed, the right of blockade is less valuable to a belligerent than I believe it to be.

I am thus led to the conclusion, not merely that the judgment of the Supreme Court in the case of the Science was not clearly wrong, but that that judgment was clearly right.

"The Dashing Wave." The foregoing remarks apply with equal force to the case of the Dashing Wave, except that she had but recently arrived at the place where she was seized; and in this case there is superadded

the facts concerning the coin of Caldwell. A Mexican would have no occasion thus to conceal his ownership. A Mexican would not have feared to make claim in the prize court. He was either Mexican or confederate, for his country had political troubles. The conclusion is difficult to avoid that he was an enemy, and his property liable to capture, contaminating all that belonged really to Lizardi & Co.

I perceive no error in the judgment of the Supreme Court in this case, except in its failure to condemn the coin as lawful prize.

"The Volant" is a case much like the Dashing Wave. There was no simulated ownership of cargo, but there was an apparent effort to mislead by the invoice, as to the cloth—to conceal the fact that it was confederate gray.

I see no sufficient reason to hold in this that the judgment of the Supreme Court was wrong.

"The Sir William Peel" differs from the other cases in the fact that she was captured in Mexican waters, where she had a right to be; though it seems from the evidence that she had previously been in Texan waters. In all other respects the case is stronger against the ship than in either of the others. It is only by giving her the benefit of doubts that I can say she should not have been condemned. I am very clearly of opinion that there was abundant reason for seizing her and sending her in for adjudication.

That she was taken in Mexican waters was a violation of the sovereignty of Mexico, but not of the rights of the ship and cargo, which could be interposed for their protection except by Mexico, was the doctrine held by the Supreme Court. I think the proposition is fully supported by reason and the principles of justice; and that it is a sound principle of international law, best in accord with the adjudged cases.

On the question of the assessment of damages in the case of the Sir William Peel, Mr. Commissioner Frazer delivered the following dissenting opinion:

Concerning the assessment of damages in the case of the Sir William Peel, (the judgment of the Supreme Court of the United States being deemed erroneous by my colleagues,) I felt constrained to dissent upon an important point.

The ship, and nearly all the cargo, having been restored, it was material to ascertain the value of the property so restored at the date of restitution. If it was then worth as much as when captured, the only legitimate damages, it seemed to me, would be its use during the period of detention, together with costs and expenses. The value, I thought, should be taken at the time and place of restitution, and not at a different time. It had been ascertained at that time by an appraisement by the prize court, one of the appraisers being an agent of the claimants. This appraisement was in round numbers, in gold, £67,500. But the claimants chose, at very great expense, to take the property to England, where they sold it, realizing only £39,600; from which has been deducted all expenses of removal to England, insurance, and other expenses of its preservation and care after restitution, (a very considerable aggregate,) and these net proceeds, deducted from the value at the time of capture, have been taken as a part of the damages awarded. I could not resist the conclusion that the claimants had, after restitution, sacrificed the property for but little more than half its value; and I could not agree that the United States should suffer that loss. It constitutes about three-fourths of the large sum awarded in the case.

N.

Dissenting opinion of Mr. Commissioner Frazer in the case of the Circassian, Nos. 432, 433, and 444. (See p. 148, ante.)

The only lawful object of a blockade is to injure the enemy. Hence there cannot, consistently with public law, be a blockade of a port unless it be an enemy's port.

But I am not prepared say that the mere occupancy of a port, however precarious and temporary, by the belligerent maintaining the blockade thereof, is such a possession as makes the port no longer the enemy's, but that of the blockading belligerent, thereby terminating the blockade. I know of no authority which goes to that extent. In such a case I think the question must be regarded as one of first impression, open to the just influence of every consideration which should affect the decision of a new question.

But I do not think this question is necessarily involved in the decision of the cases growing out of the capture and condemnation of the Circassian, and therefore I do not discuss it.

There has been much criticism of the judgment of the Supreme Court in the case of the Circassian, (2 Wall., 135.) That judgment has been questioned in quarters entitled to great respect; and it has, on such occasions, uniformly, I believe, been assumed that at the date of the capture of the vessel, (May 4, 1862,) the port of New Orleans was in the possession of the United States, a possession which subsequent events proved to be (whatever may have been apprehended at the time) permanent and uninterrupted. And it has been assumed that the Supreme Court held that, under such circumstances, the blockade of the port was not brought to an end. This is a grave misapprehension, not only of historical facts but of the doctrine announced by the Supreme Court; and yet so easy to fall into, that only by care can it be avoided. It is undoubtedly a fact of history that for several days prior to the capture at sea, of this ship, the military forces of the United States had actual possession of the city of New Orleans, were not there immediately menaced by any hostile force, and ever after held it. It is so natural to confound the city with the port of New Orleans that the error is not wonderful. And yet the distinction is very wide, and practically very important.

The city of New Orleans, of which the United States held possession, was a municipal corporation, possessing geographical boundaries defined by the laws of the State of Louisiana. The boundaries included, at the utmost, only so much of that larger territory called the parish of Orleans as lies on the left bank of the Mississippi River. But the National Government, having by the Constitution the control of commerce, and consequently the power to define the geographical limits of the ports of the United States, had, by act of Congress taking effect September 16, 1850, declared "that the port of New Orleans shall be and is hereby so extended as to embrace the whole parish of New Orleans, on both sides of the Mississippi River." (9 Stat. at L., 458.) It was not the city merely, but the whole port which had been blockaded. And the question before the Supreme Court was not whether the possession of a port by a blockading belligerent puts an end to the blockade. It is a disregard of the facts so to state it, and it is a misapprehension of the decision of the court to suppose that it was reached by determining that question in the negative. The real question was deemed by the majority of the court to be whether possession of the *city* by the United States terminated its block-

ade of the *port*. It needs only a careful reading of the opinion of the Chief Justice to see that he saw clearly the difference between the city and the port of New Orleans; and an examination of the dissenting opinion of Judge Nelson will also show that he entirely confounded the city with the port.

Is it possible to misunderstand the following language found in the opinion of the Chief Justice?

It (the blockade) applied not to the city alone, but controlled the port which includes the whole parish of Orleans and lies on both sides of the Mississippi, and all the ports on that river and on the lakes east of the city. Now, it may be well enough conceded that a continuous and complete possession of the city *and the port* and of the approaches from the Gulf, would make a blockade unnecessary, and would supersede it. But at the time of the capture of the Circassian there was *no such possession*. Only the *city* was occupied, *not the port*.

Nothing can be more certain than that the Chief Justice *thought* there was an important and very practical distinction between the city and the port of New Orleans with reference to the question of blockade. If not, then this language, marking so clearly the difference between the two things, and dwelling upon the fact that though the city was occupied by the Federal forces, a very large part of the port was not so occupied, was idle verbiage, injected into the opinion for no purpose unless it may have been to increase its volume!

I think the Chief Justice was correct in supposing that the difference between the city and the port was of practical importance in the case. A little consideration will make this quite apparent.

No rebel military force, it is true, occupied that part of the port (the right bank of the river, many miles in length) which was not occupied by the United States on the 4th May, 1862; but it was, *de facto*, territory of the rebel belligerent, nevertheless. Trade there was trade with the enemy, to prevent which is the lawful purpose of blockade. It is not necessary to the lawful blockade of an enemy's port that the enemy should hold it by the presence of a military force. Suppose, then, that on the 4th May, 1862, the Circassian had steamed into the port with a view to discharge her cargo at any landing on the right bank of the river, within the port, rebel merchants, non-combatants, being ready to receive it there and transport it into the interior, no portion of the goods being contraband, by what right, save that of blockade, could the Federal fleet have interfered to prevent it? The position and strength of that fleet, it is true, enabled it to capture, without fail, every vessel which might have attempted such a thing; but this physical ability to capture did not, *per se*, confer the right to exercise it; nor did it, *per se*, end the blockade. It is said that a municipal regulation might have been enacted prohibiting such importations or controlling them; and in execution of such an enactment the force at hand could have been employed; but this is no relief from the dilemma. The right by municipal regulations to close rebel ports and render trade with them unlawful, was claimed by the United States very early in the rebellion. It was proposed, but the right to do so was denied by Great Britain and other neutral nations, and its exercise was forborne in deference to their protests. Even in the argument for the claimant in these cases, the right of the United States to exercise sovereign rights (and belligerent rights at the same time) against the rebels to the prejudice of neutrals, is earnestly combatted by a gentleman who, as a writer upon public law, stands deservedly high as an authority, and who, in his published works, had before expressed the same opinion. Whatever

may be true as to that, it is very certain that Great Britain, having contributed more than any other nation to induce the United States to forbear, by denying the right, cannot now fairly claim for her subjects the benefit of a principle which, at the time, she so stoutly denied. Municipal regulations prohibiting neutral import trade with any part of the port of New Orleans not in Federal possession, would have been as obnoxious to Great Britain as if a like attempt had been made at that time concerning Mobile, Charleston, or Savannah. The principle which would have justified it in the one case, would have maintained it in all.

If the consideration of the case left it doubtful whether the judgment of the Supreme Court was in accordance with public law, it would be our plain duty, according to all authority, to disallow these claims. So much deference in a case of doubt is due to a deliberate judgment of a court whose independence, impartiality, and learning has given it a character in Great Britain not less lofty than it possesses at home.

But I do not doubt. Comments and criticisms upon the judgment of the court had fallen under my eye; trusting to which, I confess I had been somewhat impressed with serious doubts (to say the least) of the legality of the condemnation. But a very careful study of the case shows that, in making such criticisms, no account has been taken of the important fact that the possession of the United States forces at New Orleans did not extend to the whole port when the ship was seized; no such entire possession being anywhere directly asserted. That the error is one of inference, resulting from the fact, doubtless, that the wider area of the port, as contradistinguished from the city of the same name, has usually escaped attention. It follows, therefore, that the principle supposed to be violated by the court was really not violated at all, and that the question was not that which has been sometimes supposed. It is not, I may hope, improper to say that the best care and judgment which I am able to bring to the consideration of the case has resulted in a clear conviction that the condemnation of the *Circassian* was correct.

O.

Opinion of Mr. Commissioner Frazer in the cases of the Boyne, the Monmouth, and the Hilja, Nos. 216, 315, and 467. (See p. 153, ante.)

The allowance of prospective earnings by vessels was denied by the tribunal at Geneva *unanimously*. It is not, so far as I am aware, allowed by the municipal law of any civilized nation anywhere. The reason is obvious and universally recognized among jurists. It is not possible to ascertain such earnings with any approximation to certainty. There are a thousand unknown contingencies, the happening of any of which will render incorrect any estimate of them, and hence result in injustice.

Who can say that the *Monmouth* would have reached Savannah at all? That she could have procured a cargo of cotton at $\frac{3}{4}d.$ per pound, the lowest freight in proof? Who can say that she would have got better or as good rates as that? Why could she have done better? There is no reason. Who can say that she could have been laden and sailed before the blockade would have stopped her? The witnesses do

not say so, but only "if she had met no detention or accident." Can this commission say so? It is palpable that we can only conjecture, and conjecture is no fit basis for an award of damages. We should have had evidence more satisfactory from the claimant, such as the prevailing rate of charter of such a vessel at the time and place. Under such circumstances we are left to estimate the value of the vessel for return-cargo upon very unsatisfactory evidence. I base my estimate upon cotton-freight at $\frac{3}{4}$ d. per pound, because there is, in my judgment, a greater probability, in view of all contingencies, that this is above rather than below a just estimate.

These observations apply also to the case of the *Boyne*, heretofore decided. I now doubt whether this is not too much. It assumes that each contingency would have been avoided, the happening of any one of which would have prevented this vessel from doing as well as some others; and this assumption in favor of the claimant is quite as much as, in my judgment, we may make, with due regard to public law, as declared at Geneva, and to the principles of justice, as recognized everywhere.

The *Monmouth*, (No. 315.) The President, by proclamation of April 19, 1861, gave public notice of a purpose to blockade the ports of South Carolina, Georgia, and of the States south thereof, announcing that a "competent force *would* be posted" for that purpose. The proclamation announced further that any vessel approaching or attempting to leave "either of said ports" with a view to violate "such blockade," would be warned by the commander of "one of the blockading vessels," who would indorse such warning and the date thereof on her register, and any subsequent attempt of the same vessel to enter or leave "*the blockaded port*" (certainly meaning every port covered by the warning) would result in capture. It cannot be supposed that it was intended that this warning was to be repeated off each port blockaded.

In these cases the warning was by a vessel blockading Charleston and off that port *before* there was any actual blockading force off Savannah, and was indorsed thus:

Boarded, informed of the blockade, and warned off the coast of all the Southern States by the United States steamship *Niagara*, May 12, 1861.

EDWARD C. POTTER,
Lieutenant United States Navy.

This warning was not, and is not, disavowed. It must, therefore, have the same effect as if the officer giving it had been expressly instructed by the highest authority to give it in that form. It must be regarded as the act of the United States, and was notice to the vessel that all the Southern ports embraced within the proclamation were then actually blockaded, and that any subsequent attempt of the vessel warned to enter any of such ports would result in capture.

A vessel bound for Savannah, thus warned, it is true, might have disregarded the warning, and could lawfully have proceeded to Savannah because there was not, in fact, any force blockading that port. If captured she would, unquestionably, have been discharged with damages by the prize court.

But must the neutral merchantman run the hazard of attempting to enter Savannah? Had she found there an actual blockade and been captured, her previous warning would have been good, and her condemnation as good prize would have been certain. There is in the facts every element of a strong obligation upon the United States, and in favor of a vessel which, on the faith of the warning given, fully re-

spected it, and by so doing suffered loss, to make good that loss. The neutral vessel, ignorant as to the facts, had a right to act upon the warning; and I am compelled to hold that, in doing so, she acted with all prudence and propriety, and that, judging, as her captors must at the time, any other course would have been rashness and folly. A regard for the interests of his owners, as well as respect for the United States, required that the master should abandon any purpose to enter Savannah.

These observations apply also to Nos. 216 and 467.

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GENERAL APPENDIX.

16 H

I.—CORRESPONDENCE BETWEEN MR. FISH AND SIR EDWARD
THORNTON, PRELIMINARY TO THE NEGOTIATIONS.

I.—CORRESPONDENCE BETWEEN MR. FISH AND SIR EDWARD THORNTON RELATIVE TO THE FORMATION OF A HIGH COMMISSION.

1. *Sir Edward Thornton to Mr. Fish.*

WASHINGTON, *January 26, 1871.*

SIR: In compliance with an instruction which I have received from Earl Granville, I have the honor to state that her Majesty's government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects, respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States toward those possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, I am directed by Lord Granville to propose to the Government of the United States the appointment of a joint high commission, which shall be composed of members to be named by each government; shall hold its sessions at Washington; and shall treat of and discuss the mode of settling the different questions which have arisen out of the fisheries, as well as all those which affect the relations of the United States toward Her Majesty's possessions in North America.

I am confident that this proposal will be met by your Government in the same cordial spirit of friendship which has induced Her Majesty's government to tender it, and I cannot doubt that in that case the result will not fail to contribute to the maintenance of the good relations between the two countries which I am convinced the Government of the United States, as well as that of Her Majesty, equally have at heart.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

EDWARD THORNTON.

Hon. HAMILTON FISH, &c., &c., &c.

2. *Mr. Fish to Sir Edward Thornton.*

DEPARTMENT OF STATE,

Washington, January 30, 1871.

SIR: I have the honor to acknowledge the receipt of your note of January 26, in which you inform me, in compliance with instructions from Earl Granville, that Her Majesty's government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the

two governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects, respectively, with reference to the fisheries on the coast of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States toward those possessions; and, further, that as the consideration of these questions would involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, you are directed by Lord Granville to propose to the Government of the United States the appointment of a joint high commission, which shall be composed of members to be named by each government; shall hold its sessions at Washington; and shall treat of and discuss the mode of settling the different questions which have arisen out of the fisheries, as well as all those which affect the relations of the United States toward Her Majesty's possessions in North America.

I have laid your note before the President, who instructs me to say that he shares with Her Majesty's government the appreciation of the importance of a friendly and complete understanding between the two governments with reference to the subjects specially suggested for the consideration of the proposed joint high commission, and he fully recognizes the friendly spirit which has prompted the proposal.

The President is, however, of the opinion that without the adjustment of a class of questions not alluded to in your note, the proposed high commission would fail to establish the permanent relations and the sincere, substantial, and lasting friendship between the two governments which, in common with Her Majesty's government, he desires should prevail.

He thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable relations between the two governments. He directs me to say that, should Her Majesty's government accept this view of this matter, and assent that this subject also may be treated of by the proposed high commission, and may thus be put in the way of a final and amicable settlement, this Government will, with much pleasure, appoint high commissioners on the part of the United States, to meet those who may be appointed on behalf of Her Majesty's government, and will spare no efforts to secure, at the earliest practicable moment, a just and amicable arrangement of all the questions which now unfortunately stand in the way of an entire and abiding friendship between the two nations.

I have the honor to be, with the highest consideration, sir, your obedient servant,

HAMILTON FISH.

SIR EDWARD THORNTON, K. C. B., &c., &c., &c.

3. *Sir Edward Thornton to Mr. Fish.*

WASHINGTON, *February 1, 1871.*

SIR: I have the honor to acknowledge the receipt of your note of the 30th ultimo, and to offer you my sincere and cordial thanks for the friendly and conciliatory spirit which pervades it.

With reference to that part of it in which you state that the President thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generally known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable relations between the two governments, I have the honor to inform you that I have submitted to Earl Granville the opinion thus expressed by the President of the United States, the friendliness of which, I beg you to believe, I fully appreciate.

I am now authorized by his lordship to state that it would give Her Majesty's government great satisfaction if the claims commonly known by the name of the "Alabama" claims were submitted to the consideration of the same high commission by which Her Majesty's government have proposed that the questions relating to the British possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same commission. The expressions made use of in the name of the President in your above-mentioned note with regard to the "Alabama" claims convince me that the Government of the United States will consider it of importance that these causes of dispute between the two countries should also, and at the same time, be done away with, and that you will enable me to convey to my government the assent of the President to the addition which they thus propose to the duties of the high commission, and which cannot fail to make it more certain that its labors will lead to the removal of all differences between the two countries.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

EDWARD THORNTON.

Hon. HAMILTON FISH, &c., &c., &c.

4. *Mr. Fish to Sir Edward Thornton.*

DEPARTMENT OF STATE,
Washington, February 3, 1871.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, in which you inform me that you are authorized by Earl Granville to state that it would give Her Majesty's government great satisfaction if the claims commonly known by the name of the "Alabama claims" were submitted to the consideration of the same high commission by which Her Majesty's government have proposed that the questions relating to the British possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same commission.

I have laid your note before the President, and he has directed me to express the satisfaction with which he has received the intelligence that Earl Granville has authorized you to state that Her Majesty's government has accepted the views of this Government as to the disposition to be made of the so-called "Alabama claims."

He also directs me to say with reference to the remainder of your note,

that if there be other and further claims of British subjects, or of American citizens, growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same high commission; but he suggests that the high commissioners shall consider only such claims of this description as may be presented by the governments of the respective claimants at an early day, to be agreed upon by the commissioners.

I have the honor to be, with the highest consideration, sir, your obedient servant,

HAMILTON FISH.

Sir EDWARD THORNTON, K. C. B.,
 &c., &c., &c.

II.—APPOINTMENT OF THE AMERICAN COMMISSIONERS AND SECRETARY.

II.—A P P O I N T M E N T S.

DEPARTMENT OF STATE,
Washington, February 20, 1871.

SIR: The President having, by and with the advice and consent of the Senate, appointed you to be a commissioner of the United States in a joint high commission between the United States and Great Britain, I herewith inclose your commission. You will be pleased to inform this Department of the receipt of it, and, should it be accepted, of the name of the State or county in which you were born. I also inclose a blank form of the oath of allegiance, which, in the event of your acceptance, you will please execute and return to this Department for file.

I am, sir, your obedient servant,

HAMILTON FISH.

Hon. ROBERT C. SCHENCK.

The same to the Hon. E. R. HOAR, Hon. SAMUEL NELSON, Hon. GEORGE H. WILLIAMS.

I, Robert C. Schenck, having been appointed a commissioner of the United States in a joint high commission between the United States and Great Britain, do solemnly swear that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted, nor attempted to exercise the functions of, any office whatever under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto. And I do further swear (or affirm) that, to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: so help me God.

Sworn to and subscribed before me this —— day of ——.

APPOINTMENT OF SECRETARY.

EXECUTIVE MANSION,
Washington, February 14, 1871.

To J. C. BANCROFT DAVIS, Esq.,
Assistant Secretary of State:

You are hereby designated and directed to perform the duties of secretary of the commissioners on behalf of the United States in the joint high commission, to meet in Washington for the consideration of the questions pending between the United States and Great Britain.

U. S. GRANT.

ACCEPTANCES OF APPOINTMENTS.

WASHINGTON, *February 25, 1871.*

SIR: I have received the commission as commissioner of the joint high commission between the United States and Great Britain, and hereby accept the same. I was born in the county of Washington, State of New York.

I herewith inclose the oath of office for your Department.

I am, sir, your obedient servant,

SAMUEL NELSON.

Hon. HAMILTON FISH,
Secretary of State.

WASHINGTON, *February 25, 1871.*

SIR: Having signified my acceptance of the appointment to the duties of commissioner in the joint high commission between the United States and Great Britain, which the President has been pleased to confer on me, I herewith inclose the oath of office and allegiance, which I have taken in the form required by law.

I have also to inform you that I was born in the State of Ohio.

I have the honor to be, very respectfully, your obedient servant,

ROBERT C. SCHENCK.

Hon. HAMILTON FISH,
Secretary of State.

WASHINGTON, *March 1, 1871.*

SIR: I have the honor to acknowledge the receipt from the Department of State of a commission from the President, appointing me "to be a commissioner of the United States in a joint high commission between the United States and Great Britain," and to inform you that I accept the same. I have taken and subscribed the requisite oath, which has been duly certified, and is inclosed herewith. I was born in Concord, in the commonwealth of Massachusetts.

I am, sir, very respectfully, your obedient servant,

EBENEZER R. HOAR.

Hon. HAMILTON FISH,
Secretary of State.

WASHINGTON, *March 4, 1871.*

SIR: I have the honor to acknowledge the receipt from you of a commission from the President as one of the commissioners in a joint high commission between the United States and Great Britain, and accept the appointment. I am a native of the State of New York.

Yours, very truly,

GEO. H. WILLIAMS.

Hon. HAMILTON FISH,
Secretary of State, Washington, D. C.

III.—INSTRUCTIONS TO THE AMERICAN COMMISSIONERS.

III.—INSTRUCTIONS TO THE AMERICAN COMMISSIONERS.

Mr. Fish to General Schenck.

DEPARTMENT OF STATE,
Washington, February 22, 1871.

SIR: Your high character and experience in public affairs, and the familiarity which your long service under the Federal Government has given you of the questions to be discussed and treated by the joint commission, of which you have been appointed a member, seem to render unnecessary any instructions upon the questions that will come under the consideration of that body.

Another consideration, more personal to the undersigned, forbids an attempt on his part to give instructions to his associates on the commission.

You will receive herewith a confidential memorandum or brief, embodying a reference to correspondence of this Department, and to the history of several of the questions which may be discussed by the commission, viz:

I. The fisheries.

II. The navigation of the Saint Lawrence.

III. Reciprocal trade between the United States and the Dominion of Canada.

IV. Northwest water-boundary and the island of San Juan.

V. The claims of the United States against Great Britain on account of acts committed by rebel cruisers.

VI. Claims of British subjects against the United States for losses and injuries arising out of acts committed during the recent civil war in the United States.

It is hoped that this memorandum, which has been prepared in this Department, may aid you by its references in the consideration of the several questions on which it treats.

The President commits the discussion and treatment of the several questions to the joint discretion of yourself and your associates.

The sittings of the commission being in this city, you will have the opportunity, of which he expects you to avail yourself, of consulting with him from time to time, and upon any points in which you may have serious doubts, and you can also cautiously and confidentially ascertain the views and opinions of Senators, to whom, in case your negotiations shall result in a treaty or convention, that result must be submitted for their constitutional advice and consent.

One point not referred to in the accompanying memorandum will probably be brought to the consideration of the Joint Commission, viz: Some agreement between the two Governments defining their respective rights and duties as neutrals in case the other Government be engaged in war with a third power.

It is enough that the subject be indicated and your attention to it asked as one of the important questions that may engage the considerations of the commission.

The President hopes that whatever principles may be established or recognized in connection with this subject shall be considered equally applicable to the period covered by the late civil war in this country and the future.

I have the honor to be, sir, your obedient servant,

HAMILTON FISH.

Hon. ROBERT C. SCHENCK.

(The same to each member of the commission.)

Inclosure.

Confidential memorandum for the use of the Commissioners on the part of the United States in the American-British Joint High Commission, Washington, 1871:

- I. Correspondence between Mr. Fish and Sir Edward Thornton *preliminary* to the negotiation. (For this correspondence see *ante*, page 263 *et seq.*)
- II. The fisheries, *post*, page 277.
- III. Navigation of the Saint Lawrence, *post*, page 289.
- IV. Reciprocal trade between the United States and the Dominion of Canada, *post*, page 292.
- V. Northwest water-boundary and the island of San Juan, *post*, page 306.
- VI. The claims of the United States against Great Britain on account of acts committed by rebel cruisers, *post*, page 319.
- VII. Claims of British subjects against the United States for losses and injuries arising out of acts committed during the recent civil war in the United States, *post*, page 362.

CONFIDENTIAL MEMORANDUM FOR THE USE OF THE COMMISSIONERS ON THE
PART OF THE UNITED STATES IN THE AMERICAN-BRITISH JOINT HIGH
COMMISSION, WASHINGTON, 1871.

II.—THE FISHERIES.

1. RIGHTS AS DEFINED BY TREATY.

The convention of 1818, hereinafter referred to, gives to American fishermen—

1. The right, in common with British fishermen, to *fish* within three marine miles of the land on all the coasts marked red, blue, and yellow, respectively, on the annexed map.

2. Prior to the negotiation of the treaty of 1818, France had secured for her fishermen, by treaty with Great Britain, a similar right on all the coasts marked red. Hence it follows that the American fishermen, as to that portion of the coast, enjoy the right to *fish* in common with the French as well as the British fishermen.

3. The additional right as to the coast marked blue to *land, and dry, and cure* fish, so long as the coast is unsettled.

[As to this right, it is to be observed that it is said to be important as to the cod-fisheries, but unimportant as to the mackerel-fisheries. The cod are usually split and dried on shore; the mackerel are cured on board.]

4. The “privilege” is also reserved to the American fishermen to enter the British North American bays or harbors, not included within the limits of coast so marked in colors, “for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever.”

[The United States claim that this is a *privilege* to their fishing-vessels to go in and out of those bays and harbors for the purposes named without the custom-house formalities, and is not to be confounded with the *right* which all vessels which bear the flag of the United States have to enter the open British ports for the purpose of trade, or any other purpose lawful under the customs of nations.]

5. Except as above defined, the United States renounce forever the liberty to take, dry, or cure fish within three marine miles of any of the coasts, bays, creeks, or harbors of the British dominions in America.

2. CHARACTER OF THE FISHERIES.

The fisheries are known as the *deep-sea* and the *in-shore* fisheries.

The latter are principally for herring and mackerel; and are understood to have been the principal cause of the trouble. The former include, and in fact mainly consist of, the cod and halibut fisheries.

3. VALUE OF THE BRITISH COLONIAL MARINE FISHERIES.

The value of these fisheries, as given in the latest accessible returns, is—

Quebec.....	\$1, 046, 240 46
New Brunswick.....	638, 576 00
Nova Scotia.....	2, 501, 507 00
Newfoundland.....	7, 005, 807 40
Prince Edward Island.....	169, 580 00
Magdalen Islands.....	71, 356 00
Total.....	11, 433, 067 00

The fisheries of Newfoundland are principally deep-sea fisheries. The consul at Halifax gives it as his opinion that "of the aggregate products of the whole colonial fisheries, the in-shore fisheries—which are pursued chiefly for mackerel and herring—constitute the smaller portion; probably not more than one-fourth of the whole."

4. VALUE OF THE AMERICAN FISHERIES.

Mr. Mortimer Jackson, the consul at Halifax, says: "The number of American fishing-vessels engaged in the deep-sea fisheries off the coasts of the British North American provinces is, as near as can be estimated, about 1,400, with an aggregate tonnage of nearly 100,000 tons, employing about 17,000 men. They pursue the fisheries on the banks of Newfoundland, in the Gulf of Saint Lawrence, and on the western banks. On the banks the fisheries are pursued for cod and halibut, and in the Gulf of Saint Lawrence principally for mackerel. The capital employed in these fisheries is estimated at between eight and nine millions. The aggregate annual yield is about seven millions of dollars. The deep-sea fisheries are exclusive of the *in-shore* fisheries, which were alone affected by the abrogation of the reciprocity treaty. During the existence of that treaty, and subsequently, to a limited extent, under the license system, the in-shore fisheries were pursued by our fishermen chiefly for mackerel. *The quantity so taken, however, did not exceed, on an average, in any one year, more than one-fourth of the whole catch of that description of fish.*" (*Manuscript dispatch No. 397, January 23, 1871.*)

Mr. E. H. Derby, of Boston, says: "The fisheries of the State of Massachusetts for whale, cod, mackerel, and herring produce yearly about twelve millions of dollars, of which less than a sixth are usually drawn from our fisheries in the Gulf of Saint Lawrence." (*Manuscript Review of the Ottawa Review of the President's Message.*)

5. MARKETS FOR CANADIAN FISH.

The Newfoundland-cured codfish find a large market in Spain, Portugal, the Mediterranean, South America, and the West Indies.

With that exception, the United States furnish the best market. This market, especially as to mackerel, has not been injured by the abrogation of the reciprocity treaty.

"It was fully demonstrated, during the existence of the reciprocity treaty, that the admission of American fishing-vessels to a common participation in the privileges accorded to British vessels, instead of being injurious, was, on the whole, beneficial to the interests of the provincial fishermen." (*Manuscript report of the consul at Halifax, January 23, 1871.*)

6. DIPLOMATIC HISTORY.

The in-shore fisheries were acquired to Great Britain by the treaty of Paris, (1763,) which terminated the French dominion on this continent, and were enjoyed from that time till the Revolution by the inhabitants of the original thirteen States in common with the other inhabitants of the British empire.

In the negotiations preceding the treaty of '83, an attempt was made to induce the American commissions to give up the fisheries, which John Adams met by saying, "I will never put my hand to any article without satisfaction about the fisheries." Finding the

1782, Nov. 30.

commissioners firm on this question, the provisional articles were signed November 30, 1782, and

"The definitive treaty of peace" was signed, of which the 3d article (being identical with Article III of the provisional article) read ^{1783, Sept. 3.} thus:

ARTICLE III.

It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank, and on all the other banks of Newfoundland; also in the Gulf of Saint Lawrence, and at all other places in the sea where the inhabitants of both countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island;) and also on the coasts, bays, and creeks of all other of His Britannic Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen Islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same, or either of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement, without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

The fisheries were among the questions discussed by the commissioners for negotiating the treaty of peace that closed the war of 1813- '14. 1812. The United States commissioners claimed that the treaty of 1783 conferred no new rights upon the United States; that it was an agreement as to a division of property which took place on the division of the British empire after the success of the American Revolution, and was not in that respect abrogated by war. The British commissioners, on the other hand, held that, while the treaty of 1783 recognized the *right* of the United States to the deep-sea fisheries, it conferred *privileges* as to the in-shore fisheries and the use of the shores which were lost by a declaration of war. The parties being unable to agree, (*see Am. St. Pap., For. Rel., vol. 3, pages 732 et seq.*)

The treaty of Ghent was concluded without allusion to the fisheries. ^{1814, Dec. 24.}

Lord Bathurst instructed the governor of Newfoundland that "on the declaration of war by the American Government, and the consequent abrogation of the then existing treaties, the United States forfeited, with respect to the fisheries, those privileges which are purely conventional; and, as they have not been renewed by stipulation in the present treaty, the subjects of the United States can have no pretense to any right to fish within the British jurisdiction, or to use the British territory for purposes connected with the fisheries." (*Review of President's Message, Ottawa, December, 1870.*) ^{1815, June 17.}

This position resulted in a long correspondence between Mr. John Quincy Adams and Lord Bathurst, which ended by the British government adhering to its position. ^{1815- '16.} The correspondence may be found in *Foreign Relations, vol. 4, page 352 et seq.*

Mr. Bagot, British minister at Washington, reasserting Lord Bathurst's construction of the treaty of 1783, and of the effect of the war, proposed a new arrangement, upon the basis of a concession of the right to cure fish on certain coasts, to fish within British limits on certain coasts, and of a renunciation of the right to fish within those limits on all other coasts. The first proposition made was not an acceptable one.

Another proposition was made, which, although not accepted, appears to have been the basis of the subsequent arrangement. ^{Dec. 31.} (*Ib., page 365 et seq.*)

Instructions having been issued by Great Britain to seize foreign vessels fishing or at anchor in any of the harbors or creeks ^{1817, Aug. 8.}

in her Majesty's British North American possessions, or within their maritime jurisdiction, and send them to Halifax for adjudication, several vessels were seized, and information officially communicated to this Government. (*Ib.*, page 379.)

Mr. Gallatin, envoy extraordinary and minister plenipotentiary to 1818, May 22. France, and Mr. Rush, envoy extraordinary and minister plenipotentiary to Great Britain, were then empowered "to agree, treat, consult, and negotiate, of and concerning the general commerce between the United States and Great Britain and its dominions or dependencies, and such other matters and subjects interesting to the two nations as may be given to them in charge, and to conclude and sign a treaty or treaties, convention or conventions, touching the premises." (*Ib.*, page 372.)

Their instructions related to the prolongation of the treaty of commerce of 1815, (8 *Stat. at Large*, 228;) to the commerce and intercourse with the British colonies in the West Indies and North America; to indemnity to the owners of slaves carried away after the ratification of the treaty of Ghent; to the boundary-line between the United States and the British possessions; and to the fisheries. (*Ib.*, pages 371-2.)

They arranged for all these points, except the commerce with the colonies, in which the British ministry of that day were not disposed to allow the United States to share. (*Ib.*, page 380.)

At the third conference of the commissioners the American plenipotentiaries submitted their proposed articles, among which September 17. was the following relating to the fisheries:

ARTICLE A*.

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States *shall continue to enjoy, unmolested, forever*, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, and the western and northern coast of Newfoundland from the said Cape Ray to Quirpon Island, on the Magdalen Islands, and also on the coasts, bays, harbors, and creeks from Mount Joli, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, here above described, *of the Magdalen Islands, and of Labrador, as here above described*; but so soon as the same, or *either of them*, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such *settlement* without previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground; and the United States hereby renounce any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, and harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however*, That the American fishermen shall be admitted to enter such bays and harbors for the purpose *only of obtaining shelter, wood, water, and bait, but under such restrictions as may be necessary to prevent their drying or curing fish therein, or in any other manner abusing the privilege hereby reserved to them.*

At the fifth conference the British plenipotentiaries presented a counter project, of which the part relating to the fisheries was 1818, Oct. 6. in the following language:

ARTICLE A.

It is agreed that the inhabitants of the United States shall have liberty to take fish of every kind on that part of the western coast of Newfoundland which extends from

* The words in italics were erased as the article was finally agreed to, and, in most cases, other words substituted in their places. (See *post*.)

Cape Ray to the Quirpon Islands, and on that part of the southern and eastern coast of Labrador which extends from Mount Joli to Huntingdon Islands. And it is further agreed that the fishermen of the United States shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of the said south and east coast of Labrador, so long as the same shall remain unsettled; but as soon as the same, or any part of them, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground.

And it is further agreed that nothing contained in this article shall be construed to give to the inhabitants of the United States any liberty to take fish within the rivers of His Britannic Majesty's territories, as above described; and it is agreed on the part of the United States that the fishermen of the United States resorting to the mouths of such rivers shall not obstruct the navigation thereof, nor wilfully injure nor destroy the fish within the same, either by setting nets across the mouths of such rivers or by any other means whatever.

His Britannic Majesty further agrees that the vessels of the United State, *bona fide* engaged in such fishery, shall have liberty to enter the bays and harbors of any of His Britannic Majesty's dominions in North America for the purpose of shelter or of repairing damages therein, and of purchasing wood and obtaining water, and for no other purpose, and all vessels so resorting to the said bays and harbors shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein.

It is further well understood that the liberty of taking, drying, and curing fish, granted in the preceding part of this article, shall not be construed to extend to any privilege of carrying on trade with any of His Britannic Majesty's subjects residing within the limits hereinbefore assigned to the use of the fishermen of the United States for any of the purposes aforesaid.

And in order the more effectually to guard against smuggling, it shall not be lawful for the vessels of the United States engaged in the said fishery to have on board any goods, wares, or merchandise whatever, except such as may be necessary for the prosecution of the fishery or the support of the fishermen while engaged therein, or in the prosecution of their voyages to and from the said fishing-grounds. And any vessel of the United States which shall contravene this regulation may be seized, condemned, and confiscated, together with her cargo.

The American plenipotentiaries replied to this as follows:

1818, Oct. 7.

FISHERIES.

The American plenipotentiaries are not authorized by their instructions to assent to any article on that subject which shall not secure to the inhabitants of the United States the liberty of taking fish of every kind on the southern coast of Newfoundland from Cape Ray to the Ramea Islands, and on the coasts, bays, harbors, and creeks from Mount Joli on the southern coast of Labrador to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, and also the liberty of drying and curing fish in any of the unsettled bays, harbors, and creeks of Labrador, and of the southern coast of Newfoundland, as above described, with the proviso respecting such of the said bays, harbors, and creeks as may be settled.

The liberty of taking fish within rivers is not asked. A positive clause to except them is unnecessary, unless it be intended to comprehend under that name waters which might otherwise be considered as bays or creeks. Whatever extent of fishing-ground may be secured to American fishermen, the American plenipotentiaries are not prepared to accept it on a tenure or on conditions different from those on which the whole has heretofore been held. Their instructions did not anticipate that any new terms or restrictions would be annexed, as none were suggested in the proposals made by Mr. Bagot to the American Government. The clauses forbidding the spreading of nets, and making vessels liable to confiscation in case any articles not wanted for carrying on the fishery should be found on board, are of that description, and would expose the fishermen to endless vexations.

At the sixth conference the American plenipotentiaries declared that they could not agree to the article on the fisheries brought forward by the British plenipotentiaries at the preceding conference. (*Ib.*, page 392.)

1818, Oct. 9.

The British plenipotentiaries presented the following article as to the fisheries:

Oct. 13.

ARTICLE A.*

Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of His Britannic Majesty's dominions in America:

It is agreed between the high contracting parties that the inhabitants of the said United States *shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Ramea Islands; on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands; on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks from Mount Joli, on the southern coast of Labrador, to and through the Straits of Belleisle; and thence northwardly, indefinitely, along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground.*

And the United States hereby renounce, *forever*, any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: Provided, however, That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.

This article was accepted by the American commissioners, and is identical with article incorporated in the convention. (8 Stat. at Large, page 248.)

The comparison of this article with the article submitted by the American commissioners, on the 17th of September, shows that the only material change made, so far as the present discussion is concerned, was in the exclusion of the word "*bait*." It is represented that the "*bait*" referred to in the treaty must have been bait for "*cod*," which were caught in those waters, as the mackerel-fisheries in those waters did not begin till several years after that time. It was, therefore, within the letter and spirit of the convention to deny to American fishermen the right to *catch* that bait in those waters. The favorite bait for the mackerel is said to be caught only off the coast of Maine, and not to be found in Canadian waters. If this is correct, it could not have been intended to deny to our fishermen the right to *purchase* that bait in British ports.

Was passed in the Imperial Parliament the "Act to enable his Majesty to make regulations with respect to the taking and curing fish on certain parts of the coast of Newfoundland, Labrador, and His Majesty's other possessions in North America, according to a convention made between His Majesty and the United States of America." It is by this statute declared to be unlawful for persons, not natural-born British subjects, to fish for, in a foreign vessel, take, dry, or cure any fish within three marine miles of any coasts, bays, creeks, or harbors whatever, in any British port in America, not included within the limits specified and described in the first article of the convention of 1818.

It is further declared that it may be lawful for the United States fishermen to enter into such bays or harbors, for the purpose of shelter and

* The words in italics were inserted by the British commissioners in lieu (generally) of other words erased from the project submitted by the American commissioners on the 17th of September. In some cases the words in italics are additions. (See *ante*.)

repairing damages therein, and of purchasing wood, and of obtaining water, and for no other purpose whatever; that the governor of Newfoundland is invested with power to order such persons to depart; and that persons refusing to depart after notice, or neglecting to conform to regulations, shall forfeit two hundred pounds. (*Sabine's Fisheries*, 394.)

In the spring of the year the schooner "Charles" was seized for a breach of this act, in returning to a harbor a second time after warning, "the weather being fine and moderate the whole time." (*S. Ex. Doc. 100, 32d Con., 1st sess., page 5.*) 1823.

It appearing that the Charles, during her detention, had been used as a British cruiser, the vessels captured by her were restored, and official information thereof given. (*Ibid., page 11.*) 1824, June 10.

Mr. Vaughn informed Mr. Clay that "the Charles had been regularly condemned in the vice-admiralty court of the province of New Brunswick, and that it was not expected that the Government of the United States would lend further countenance to the complaints of the owners." (*Ibid., page 54.*) 1826, Feb. 5.

It does not appear that there was any further correspondence about this vessel.

More or less correspondence took place about the "Reindeer" and the "Ruby," which were rescued by force after having been seized by a British cruiser. 1824-'26.

The last letter on the subject (from Mr. Vaughn to Mr. Clay) does not appear to have been ever answered. From that time until 1836 there is no evidence of complaint on the files of the Department of State, so far as known. 1826, April 29.

Some complaints of trespass were made by Great Britain this year, but on investigation they appeared to have little foundation. (*Ib., pages 55, 56, 57, and 58.*) 1836.

In this year the statute of Nova Scotia was passed, authorizing officers to go on board vessels hovering within three miles of the coast or harbors; to stay on board; to require the vessel to depart; to bring it into port if it did not do so within twenty-four hours; to examine the master on oath; to condemn him to a forfeiture of £100 if he did not make true answer; and also authorizing a forfeiture of the vessel or cargo found fishing within forbidden waters. There were many other extraordinary, onerous, and unjust provisions in this act, for which reference is made to the act. (*S. Ex. Doc. 100, 32d Con., 1st sess., page 108.*) 1836.

The same colony, in an address to the Queen, prayed for "a naval force to put an end to American aggressions;" to which the colonial secretary replied that "it had been determined for the future to station, during the fishing season, an armed force on the coast of Nova Scotia to enforce a more strict observance of the treaty by American citizens." (*Sabine's Fisheries*, page 399.) 1838.

The seizures which followed this course were numerous. (*Ib., page 400.*)

The voluminous correspondence which grew out of these seizures will be found in the Senate Ex. Doc. already cited, pages 59 to 103. The results are summed up in a report from the acting Secretary of State, Mr. Vail, (*page 92,*) and in a report from Lieutenant-Commanding Paine to Mr. Forsyth, (*page 98.*) Mr. Vail "is unable to state whether, in the cases under consideration, there has been any flagrant infraction of the existing treaty stipulations," (*page 95.*) He appears to think that most of the cases were connected with alleged violations of the customs laws. Lieutenant Paine reports that "the authorities of Nova Scotia seem to claim a right to exclude Americans 1839, Aug. 14. Dec. 29.

from all bays," "and also to draw a line from headland to headland;" "that the provincial authorities claim a right to exclude vessels, unless in actual distress;" and "would exact that American fishermen shall have been supplied on leaving home with wood and water for the cruise." (*Ib.*, pages 99, 100.)

Mr. Forsyth informed Mr. Stevenson, the United States minister in London, that the provincial "authorities claim a right to exclude our vessels from resorting to their ports unless in actual distress, and American vessels are accordingly warned to depart or ordered to get under way and leave a harbor whenever the provincial custom-house or British naval officer supposes, without a full examination "of the circumstances under which they entered, that they have been there a reasonable time," and instructed him to "immediately remonstrate against the illegal and vexatious proceedings of the authorities of Nova Scotia toward our fishermen, and request that measures be forthwith adopted by Her Majesty's government to remedy the evils arising out of this misconstruction on the part of the provincial authorities of their conventional obligations." He also gave strong and explicit instructions as to the Nova Scotia act of 1836. (*Ib.*, pages 106-108.)

The reasoning of Mr. Forsyth, on pages 107 and 108, upon the Nova Scotia law of 1836, is applicable, without changing a word, to the Dominion laws of 1868 and 1870.

Mr. Stevenson brought to Lord Palmerston's notice: 1. The claim to exclude American vessels from waters "within three miles of a line drawn from headland to headland, instead of from the indents of the shores of the provinces." 2. That the authorities of Nova Scotia had "put upon the stipulations of the treaty [as to the entry to harbors, &c.] a construction directly in conflict with their object, and entirely subversive of the rights and interests of the citizens of the United States." 3. The objectionable law of Nova Scotia. 4. The assertion, said to be untenable, "that the Gut of Canso is a narrow strip of water completely within and dividing several counties of the province." (*Ib.*, pages 113, 114, and 115.)

It resulted from this note that the law-officers of the Crown were inquired of and gave their opinions: 1. Sustaining the colonial "headland" doctrine, on the assumption that the word "headland" is used in the convention. No such word is there found. 2. Giving an answer as to the use of ports, which is immaterial in the present aspect, but which was favorable to the American fishermen so far as it went. 3. Say nothing about the objectionable clauses in the law. 4. Affirming the colonial doctrine about the Gut of Canso. (*Sabine Fisheries*, pages 405 and 406.)

It does not appear that this document was ever officially communicated to this Government.

In a discussion, however, which took place at London, between Mr. Everett and Lord Aberdeen, in regard to the schooner Washington, captured in the Bay of Fundy, these views of the Crown law-officers were officially asserted, but without referring to them. (*S. Ex. Doc. No. 100, as above, page 120, et seq.*)

Lord Aberdeen informed Mr. Everett that while the British government did not concede that the United States had a right to the fisheries in the Bay of Fundy, "they are prepared to direct their colonial authorities to allow henceforward the United States fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach, except in the cases specified in the treaty of 1818, within three miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick." (*Ib.*, page 136.)

In this long discussion Mr. Stevenson's complaints as to the restrictions upon the use of ports seem not to have been noticed by the British government, unless the last clause quoted from Lord Aberdeen's note to Mr. Everett is to be construed as an implied re-assertion of the doctrine.

Sir Robert Peel's government having meanwhile fallen, Lord Stanley wrote to Lord Falkland that the British government 1845, Sept 17. had abandoned the intention they had on the subject, and should adhere to the strict letter of the treaties, except in so far as they may relate to the Bay of Fundy.

No collision of authority, however, occurred, or was threatened, until Mr. Crampton gave notice that a force of war-steamers and sailing-vessels was coming to the fishing-grounds to prevent encroachments of vessels belonging to citizens of the United States on the fishing-grounds reserved to Great Britain. (*Ib.*, page 154.) 1852, July 5.

This was done after an ineffectual attempt to induce the United States to conclude a reciprocity treaty. (*Sabine's Fisheries*, pages 436, 437, 438.)

Mr. Webster, Secretary of State, thereupon issued a circular notice to the American fishermen. The following passage is 1852, July 6. quoted with approbation in the pamphlet review of the President's message already cited, (page 15,) and appears to be relied upon by Canadian authorities:

It would appear that by a strict and rigid construction of this article fishing-vessels of the United States are precluded from entering the bays or harbors of the British provinces, except for the purpose of shelter, repairing damages, and obtaining wood and water. A bay, as is usually understood, is an arm or recess of the sea entering from the ocean between capes and headlands, and the term is applied equally to small and large tracts of water thus situated; it is common to speak of Hudson's Bay, or the Bay of Biscay, although they are very large tracts of water.

The British authorities insist that England has a right to draw a line from headland to headland, and to capture all American fishermen who may follow their pursuits inside of that line. It was undoubtedly an oversight in the convention of 1818 to make so large a concession to England, since the United States has usually considered that those vast inlets or recesses ought to be opened to American fishermen as freely as the sea itself to within three marine miles of the shore.

The reviewer claims that Mr. Webster's "sound judgment compelled him to recognize the legal force of the British claims to the only point then in dispute, viz, *the headland line*. (*Review of President's message*, page 16.)

To reach that result he suppresses the following language from the close of the same circular:

Not agreeing that the construction thus put upon the treaty is conformable to the intentions of the contracting parties, this information is, however, made public to the end that those concerned in the American fisheries may perceive how the case at present stands and be on their guard. (*Sabine's Fisheries*, page 441.)

The provincial secretary of Nova Scotia issued a notice that 1852, Aug. 23. "No American fishing-vessels are entitled to commercial privileges in provincial ports, but are subject to forfeiture if found engaged in traffic. The colonial collectors have no authority to permit freight to be landed from such vessels, which, under the convention, can only enter our ports for the purposes specified therein, and for no other." (*Review of President's message*, page 12.)

The case of the "Washington" (one of the vessels whose seizure was discussed by Mr. Everett) came before the joint commission for settlement of claims, in London, and on disagreement of the commissioners was decided by the umpire, (Mr. Joshua Bates,) who said: 1853-'54.

The question turns, so far as relates to the treaty stipulations, on the meaning given to the word "bays" in the treaty of 1783. By that treaty the Americans had no right to

dry and cure fish on the shores and bays of Newfoundland, but they had that right on the *coasts, bays, harbors, and creeks* of Nova Scotia; and as they must land to cure fish on the shores, bays, and creeks, they were evidently admitted to the shores of *the bays, &c.* By the treaty of 1818 the same right is granted to cure fish on the coasts, bays, &c., of Newfoundland, but the Americans relinquish that right *and the right to fish within three miles of the coasts, bays, &c., of Nova Scotia.* Taking it for granted that the framers of the treaty intended that the words "bay or bays" should have the same meaning in all cases, and no mention being made of headlands, there appears no doubt that the Washington, in fishing ten miles from the shore, violated no stipulations of the treaty.

It was urged, on behalf of the British government, that by coasts, bays, &c., is understood an imaginary line, drawn along the coast from headland to headland, and that the jurisdiction of Her Majesty extends three marine miles outside of this line; thus closing all the bays on the coast or shore, and that great body of water called the Bay of Fundy, against Americans and others, making the latter a British bay. This doctrine of headlands is new, and has received a proper limit in the convention between France and Great Britain of 2d August, 1839, in which "it is agreed that the distance of three miles fixed as the general limit for the exclusive right of fishery upon the coasts of the two countries shall, with respect to bays, the mouths of which do not exceed ten miles in width, be measured from a straight line drawn from headland to headland."

The Bay of Fundy is from 65 to 75 miles wide and 130 to 140 miles long; it has several bays on its coasts; thus the word bay, as applied to this great body of water, has the same meaning as that applied to the Bay of Biscay, the Bay of Bengal, over which no nation can have the right to assume the sovereignty. One of the headlands of the Bay of Fundy is in the United States, and ships bound to Passamaquoddy must sail through a large space of it. The islands of Grand Menan (British) and Little Menan (American) are situated nearly on a line from headland to headland. These islands, as represented in all geographies, are situate in the Atlantic Ocean. The conclusion is, therefore, in my mind irresistible that the Bay of Fundy is not a British bay, nor a bay within the meaning of the word, as used in the treaties of 1783 and 1818. (*Report of Decisions of Commission, page 181.*)

Mr. Richard Rush, one of the negotiators of the treaty of 1818, 1853, July 18. wrote to the Secretary of State, (referring to that instrument :) "In signing it we believe that we retained the right of fishing in the sea, whether called a bay, gulf, or by whatever term designated, that washed any part of the coast of the British North American provinces, with the simple exception that we did not come *within a marine league* of the shore. * * * * * We inserted the clause of renunciation. The British plenipotentiaries did not desire it."

The conclusion of the reciprocity treaty rendered the re-assertion of the disputed claim by the Nova Scotian secretary of no importance, and disposed of all the other questions for the time being. (10 *Stat. at Large, page 1089.*)

1854, June 5. Notice was given to abrogate the reciprocity treaty, the abrogation to take effect in one year from the notice.

The Canadian government then resorted to the system of licensing American fishermen to fish in the in-shore fisheries. The number of licenses taken out the first year is reported to have been 354. (*Review of President's message, page 23.*) The fee is stated to have been fifty cents per ton. (*Manuscript review of the review, page 27.*)

The license-fee the next year was one dollar per ton. (*Manuscript review, &c., page 27.*) The number of licenses was 281. (*Review, &c., page 23.*)

The license-fee was again doubled, viz, to two dollars per ton, 1868-'69. (*Ms. review, &c., page 27;*) only fifty-six licenses were taken out in 1868, and in the following year (1869) only twenty-five licenses were taken out. (*Review of President's message, page 23.*)

The Dominion "act respecting fishing by foreign vessels," 1868, May 22. passed in 1868, and the third section, amended in 1870, contains, among other provisions, the following: Section 1, authorizing the granting of licenses. Section 2, authorizing officers to board 1870, May 12.

ships, vessels, or boats within any harbor of Canada, or hovering within three marine miles of the coasts, &c., and to stay on board. Section 3, as amended, provides that any one of such officers, &c., may bring any ship, &c., hovering, &c., into port and search her cargo; and may also examine the master on oath touching the cargo and voyage; and that if true answers are not given the master shall forfeit \$400; and that if the ship, &c., be foreign or not navigated according to the laws of the United Kingdom or Canada, and shall have been found fishing or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, &c., not included in the limits named in the convention of 1818, the ship, &c., with its tackle, &c., shall be forfeited. Section 4 provides that every person opposing an officer shall forfeit \$800. Section 10 provides that in case of seizure *the burden of proving the illegality shall be upon the owner or claimant*. Section 12 requires heavy security to be given before a seizure can be contested. Section 14 limits a right of action for an illegal seizure to three months.

This statute contains in an exaggerated form the worst features of the Nova Scotia statute of 1836.

Mr. Forsyth, in his instructions to Mr. Stevenson, already alluded to, said that that statute was a "violation of well-established principles of the common law of England, and of the principles of all just powers and of all civilized nations, and seemed to be expressly designed to enable Her Majesty's authorities, with perfect impunity, to seize and confiscate American vessels, and to embezzle, almost indiscriminately, the property of our citizens employed in the fisheries on the coasts of the British possessions." Mr. Everett stigmatized it as "possessing none of the qualities of the law of civilized states but its forms." And it was styled by a Senator of that time as "evidently designed to legalize marauding upon an industrious, enterprising class of men, who have no means to contend with such sharp and unwarrantable weapons of warfare." (*Sabine's Fisheries*, page 478.)

Mr. Thornton officially communicated to Mr. Fish the intention of the Canadian government to issue no more licenses to American fishermen. 1870, April 29.

Mr. Thornton communicated officially to the Department the instructions issued to the commander of the British naval forces, by which it would appear that, notwithstanding the decision of the umpire in 1853, Her Majesty's government in 1866 were "clearly of the opinion that by the convention of 1818 the United States have renounced the right of fishing not only within three miles of the colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek; but that they are not disposed, for the present, to enforce what they regard as their rights." (*Foreign Relations*, 1870, page 419.) 1870, June 3.

The whole correspondence in the book last cited, from page 407 to page 434, bears directly upon the issues now raised.

Mr. Thornton informed Mr. Fish that he had "received instructions from Earl Granville to explain to Mr. Fish that the instructions respecting the limits within which the prohibition of fishing is to be enforced against the United States fishermen are not to be considered as constituting an arrangement between the governments of the United States and of Great Britain, by which Canadian rights are waived, or the United States fishermen invested with any privilege." 1870, July 21.

7.—SUMMARY OF THE CONCLUSIONS ESTABLISHED BY THE FOREGOING REVIEW.

I. That the acquisition of the right to American fishermen to fish on the in-shore fisheries, from which they are now excluded, is more im-

portant as removing danger of collision than as of great intrinsic value. Its money-value is probably overestimated by the Canadians.

II. That the British headland doctrine has no foundation in the treaty, has been decided against Great Britain in a cause where it was the only issue, and is now insisted upon theoretically rather than practically.

III. That the right now asserted to exclude American fishermen from the open ports of the Dominion; to prevent them from purchasing bait, supplies, ice, &c.; to prevent them from transshipping their fish in bond, under color of the provisions of the convention of 1818, is an assumption and a construction of that instrument which was never acquiesced in by the United States; and is carrying out in practice provisions which were proposed to the United States commissioners by the British commissioners in 1818, and were rejected by the former.

IV. That the mackerel fishery, out of which the trouble mostly comes, is a matter that has come into existence since the negotiation of the treaty, and it is a subject for consideration whether the terms of the convention are fairly applicable to it.

8.—REMEDIES.

It is suggested that this class of questions may be adjusted, either—

I. By agreeing upon the terms upon which the whole of the reserved fishing-grounds may be thrown open to American fishermen, which might be accompanied with a repeal of the obnoxious laws, and the abrogation of the disputed reservation as to ports, harbors, &c., &c.; or, failing that—

II. By agreeing upon the construction of the disputed renunciation; upon the principles upon which a line should be run by a joint commission to exhibit the territory from which the American fishermen are to be excluded; and by repealing the obnoxious laws, and agreeing upon the measures to be taken for enforcing the colonial rights, the penalties to be inflicted for a forfeiture of the same, and a mixed tribunal to enforce the same. It may also be well to consider whether it should be further agreed that the fish taken in the waters open to both nations shall be admitted free of duty into the United States and the British North American Colonies.

In addition to the authorities hereinbefore cited, there is in the archives of the Department of State a copious and well-arranged memoir upon the subject of the fisheries, by Richard D. Cutts, esq., of the Coast-Survey, which will be placed at the disposal of the commissioners.

III.—NAVIGATION OF THE ST. LAWRENCE.

The President states in his Annual Message (December, 1870) that this river constitutes a material outlet to the ocean for eight States, with an aggregate population of about 17,600,000 inhabitants, and with an aggregate tonnage of 661,367 tons upon the waters which discharge into it.

During the administration of Mr. John Quincy Adams, Mr. Clay demonstrated the natural right of the citizens of the United States to the navigation of this river, claiming that the act of the congress of Vienna, in opening the Rhine and other rivers to all nations, showed the judgment of European jurists and statesmen that the inhabitants of a country through which a navigable river passes have a natural right to enjoy the navigation of that river to and into the sea, even though passing through the territories of another power. This right does not exclude the co-equal right of the sovereign possessing the territory through which the river debouches into the sea to make such regulations relative to the police of the navigation as may be reasonably necessary; but those regulations should be framed in a liberal spirit of comity, and should not impose needless burdens upon the commerce which has the right of transit. (6 *Foreign Relations*, folio pages 757 to 777.)

If the claim made by Mr. Clay was just when the population of States bordering on the shores of the lakes was only three million four hundred thousand, it now derives greater force and equity from the increased population, wealth, production, and tonnage of the States on the Canadian frontier. Since Mr. Clay advanced his argument in behalf of our right, the principle for which he contended has been frequently, and by various nations, recognized by law or by treaty, and has been extended to several other great rivers. By the treaty concluded at Mayence, in 1831, the Rhine was declared free from the point where it is first navigable into the sea. By the convention between Spain and Portugal, concluded in 1835, the navigation of the Douro, throughout its whole extent, was made free for the subjects of both crowns. In 1853 the Argentine Confederation, by treaty, threw open the free navigation of the Parana and the Uruguay to the merchant-vessels of all nations. In 1856 the Crimean war was closed by a treaty which provided for the free navigation of the Danube. In 1858 Bolivia, by treaty, declared that it regarded the rivers Amazon and La Plata, in accordance with fixed principles of national law, as highways or channels opened by nature for the commerce of all nations. In 1859 the Paraguay was made free by treaty, and in December, 1866, the Emperor of Brazil, by imperial decree, declared the Amazon to be open, to the frontier of Brazil, to the merchant-ships of all nations. Sir Robert Phillimore, the greatest living British authority on this subject, while asserting the abstract right of the British claim, says: "It seems difficult to deny that Great Britain may ground her refusal upon strict *law*; but it is equally difficult to deny, first, that in so doing she exercises harshly an extreme and hard law; secondly, that her conduct with respect to the navigation of the St. Lawrence is in glaring and discreditable inconsistency with her conduct with respect to the navigation of the Mississippi. On the ground

that she possesses a small domain, in which the Mississippi took its rise, she insisted on the right to navigate the entire volume of its waters. On the ground that she possesses both banks of the St. Lawrence where it disembogues itself into the sea, she denies to the United States the right of navigation, though about half the waters of Lakes Ontario, Erie, Huron, and Superior, and the whole of Lake Michigan, through which the river flows, are the property of the United States." (See Phillimore's International Law, vol. 1, page 167 *et seq.*, where the authorities are collected and reviewed.)

The canals in aid of the lake and Saint Lawrence navigation are :
 1. The Sault Ste. Marie Canal, in the dominions of the United States. Vessels between Lake Huron and Lake Superior must pass through this canal. 2. The Saint Clair Canal, in the dominions of the United States, which is a deepening of the channel to the depth of fourteen feet. 3. The Welland Canal, in British dominions, from Lake Erie to Lake Ontario. 4. Several canals between Lake Ontario and tide-water, in the aggregate about forty miles in length. 5. The canal between Lake Champlain and the river Saint Lawrence. Neither of the Canadian canals have at present the capacity of the American canals.

1870, July 12.

A confidential memorandum was submitted by Great Britain as the basis of proposed arrangements on the subject of the navigation of the Saint Lawrence, and other inland waters of British North America, &c. This was in substance as follows: That if a satisfactory reciprocity-treaty could be made, the United States should be restored to the enjoyment of the fisheries as under the old reciprocity-treaty; and also to the navigation of the inland waters of Canada; provided, further, that like permission in the United States should be granted to Canada. Canada was also willing to further agree to enlarge and improve the access to the ocean, provided she could have assurance of the permanency of the arrangement for reciprocity. The proposal further contemplated throwing open the coasting-trade to each party; reciprocal patent and copyright laws; arrangements for a reciprocal transit trade; extension of the provisions of the extradition treaties, and a re-adjustment of the Canadian excise-duty.

No steps were taken in the direction of carrying out these suggestions.

The present importance of some of these points may be estimated from the following tables for the fiscal year ending June 30, 1869:

I.—Imports into Quebec and Ontario.

Place.	Total imports of foreign goods.	Foreign goods—	
		Not the produce of the United States, imported via the United States.	The produce of the United States, imported from the United States.
Quebec.....	\$29,545,177	\$6,890,207	\$6,170,078
Ontario.....	23,724,764	4,855,831	14,592,575
Total.....	53,269,941	11,746,038	20,762,653

II.—Statement showing the number, national character, and tonnage (computed from aggregate number of trips made during the season of navigation) of vessels which passed on and through the Welland, St. Lawrence, Chambly, Burlington Bay, Rideau and Ottawa Canals, St. Our's and St. Ann's Locks, during the fiscal year ending June 30, 1869, and amount of tolls collected thereon.

[Compiled from the Canadian Almanac for 1871.]

Vessels.	From Canadian to Canadian ports.		From Canadian to American ports.		From American to Canadian ports.		From American to American ports.		Total.		Amount of tolls on vessels.
	Number.	Tons.	Number.	Tons.	Number.	Tons.	Number.	Tons.	Number.	Tons.	
CANADIAN VESSELS AND STEAMERS.											
Welland.....	1,888	299,413	673	135,100	707	140,878	10	2,028	3,278	548,019	\$11,044 02
St. Lawrence.....	10,096	988,790	1,328	132,166	572	48,182	2	41	11,998	1,150,179	8,888 34
Chambly and St. Our's Lock.....	851	45,056	1,816	139,950	1,768	152,905	.....	.....	4,435	357,941	4,258 56
Burlington Bay.....	1,690	190,362	160	26,362	192	32,450	.....	.....	1,442	249,174	626 07
St. Ann's Lock.....	5,736	406,789	605	57,713	.....	.....	.....	.....	6,341	464,502	1,161 30
Rideau and Ottawa.....	8,027	520,491	751	73,707	.....	.....	.....	.....	8,778	591,198	4,709 97
Total Canadian vessels.....	27,688	2,420,931	5,333	571,998	3,239	374,415	12	2,069	36,272	3,370,013	30,688 26
AMERICAN VESSELS AND STEAMERS.											
Welland.....	12	1,563	307	31,022	356	51,966	2,116	634,041	2,791	719,432	17,386 90
St. Lawrence.....	5	108	124	7,239	75	4,656	146	3,468	350	15,471	90 17
Chambly and St. Our's Lock.....	5	223	501	35,575	496	35,308	8	601	1,010	71,707	895 71
Burlington Bay.....	1	104	13	1,189	15	1,242	.....	.....	29	2,535	6 26
St. Ann's Lock.....	.....	.....	.....	.....	102	7,347	102	7,313	204	14,660	36 65
Rideau and Ottawa.....	100	7,187	93	6,703	.....	.....	.....	.....	193	13,890	104 19
Total American vessels.....	123	9,125	1,038	81,728	1,044	100,519	2,372	646,323	4,577	837,635	18,579 88
Grand total Canadian and American.....	27,811	2,430,056	6,731	653,726	4,283	474,934	2,384	648,992	40,349	4,207,708	49,208 14

IV.—RECIPROCAL TRADE BETWEEN THE UNITED STATES AND THE DOMINION OF CANADA.

1845. Previously to 1845 the trade of the United States and other nations with the British provinces of Canada and others north and east of the United States was burdened with a system of differential duties which discriminated against foreign importations in favor of British to such an extent as to prevent any extensive importations into those provinces from the United States.

Under these circumstances our exports, which, for the four years preceding the reciprocity-treaty, averaged about eleven millions of dollars per annum, did not average, for the period extending from 1821 to 1844, four millions per annum. (*Estimated from table 3, 1st division, H. R. Ex. Doc., 38th Cong., 1st sess.*)

In 1845 the British government changed their colonial commercial policy by authorizing the Canadian legislature to regulate their own tariff. In 1846 the Canadian legislature removed the existing differential duties, and admitted American manufactures and foreign goods, purchased in the American markets, on the same terms as those from Great Britain. This change gave a considerable impetus to importations from the United States, so that by the years 1851-'52-'53 they were upward of twelve, ten and a half, and thirteen millions of dollars, respectively. (*S. Ex. Doc. No. 1, 32d Cong., 1st sess., p. 85.*) (*Estimated from table 3, 1st division, H. R. Ex. Doc., 38th Cong., 1st sess.*)

1849. A proposition for a reciprocal relaxation of commercial restrictions between the United States and the British North American provinces was presented by Mr. John F. Crampton, the chargé d'affaires of Great Britain, in a note of the 22d March, 1849, which, with the correspondence to which it led, is to be found in the congressional documents.

1850. President Taylor's message, transmitting this correspondence to the House of Representatives, submits to Congress the expediency of effecting an arrangement for a free trade between the United States and the provinces in their natural productions, providing, also, for the free navigation of the Saint Lawrence and of the canals connecting it with the lakes.

1846. Mr. Paackenham, the British minister, had, in 1846, communicated with the Secretary of the Treasury, (Hon. Robert J. Walker,) who immediately submitted the matter to the Government;

1848. and Mr. Crampton again brought the subject before him in 1848, in consequence of which a bill was drawn up by Mr. Grinnell of the Committee on Commerce of the House of Representatives, and its adoption recommended by the Secretary of the Treasury in a letter to that committee of 1st of May, 1848. The bill was passed by the House of Representatives, but was not voted upon that session by the Senate. (*Ex. Doc. No. 64, H. R., 31st Cong., 1st session.*)

1849. Mr. Crampton, on the 25th of June, 1849, wrote to the Secretary of State, Mr. Clayton, inclosing a memorandum drawn up by Hon. William Hamilton Merritt, one of the Canadian cabinet, sent to Washington to ascertain the decision of the United States. The

memorandum reviews the efforts made by the provincial government, and the notice given by Hon. Mr. Robinson, in the provincial parliament, of an address to the Queen, praying for a return to protection, &c., incloses copy of a letter from Mr. Grinnell, of the Committee on Commerce, to Hon. R. J. Walker, and Mr. Walker's reply meets objections to reciprocity, and elaborates considerations in favor of it.

Mr. Grinnell to Mr. Walker, April 28, 1848, asks his views on reciprocal free trade in the articles of the growth or production of the provinces and the United States, respectively. 1848.

Mr. McC. Young replies for Mr. Walker, warmly approving it. The Canadian bill on the subject is given, and is said to be the exact counterpart of the bill before Congress.

Mr. Clayton wrote to Mr. Crampton 26th June, 1849, in reply to his note of the day before, which inclosed the memorandum made by Mr. Merritt. As a measure affecting the revenue, the proposed arrangement would be referred to Congress, before whom a copy of the papers would be laid. Refers, as furnishing a British example for this, to Mr. Bancroft's efforts to negotiate at London a commercial treaty, in 1847, when the necessity of a similar reference to Parliament was pointed out to him; and to the failure of the reciprocity-bill in the Senate, after considerable debate, when a bare majority would have carried it, as an indication that a treaty having the same objects in view could not be expected to obtain the requisite majority of two-thirds. (*Ho. Repts. Ex. Doc. No. 64, 31st Congress, 1st session.*) 1849.

President Fillmore's annual message of 2d December, 1851, invites the attention of Congress to the question of reciprocal trade with British provinces; states that overtures for a convention have been made, but suggests that it is preferable that the subject should be regulated by reciprocal legislation. Documents submitted showing the offer of British government, and measures it may adopt, if some arrangement on this subject is not made. 1851, Dec. 2.

The accompanying papers were: Note of March, 1851, from Sir H. L. Bulwer to Mr. Webster, inclosing copy of letter of 6th January, 1851, from Mr. F. Hincks, inspector-general of customs, Canada, to Hon. R. McLane, chairman of Committee on Commerce, House of Representatives. Sir H. L. Bulwer thinks that the Canadians consider that their application for an interchange of agricultural products has failed because they have generously, without stipulations, conceded many commercial advantages which it was in their power to bestow; and that their only mode of securing desired privileges is to revoke concessions made. His attention had been drawn to two resolutions which passed the Senate on the subject, which he was told would have passed the House if proposed to that body. 1851.

Proposes entering into a negotiation.

Mr. Hincks, in his letter to Mr. McLane, recites the important changes which have occurred in the colonial policy of Great Britain concerning the regulation of commercial matters, and the removal of differential duties from American productions; that had Canada at that time stipulated that in return for her admission of American manufactures, the duties should be removed from her products, it would have been the interest of the United States to have agreed to it. No such proposition, however, was made; and the very important concession scarcely attracted attention in the United States. Describes the important results in the increased demand for American productions in the provinces, and the hardship of Canadian raw products, sent to the United States, being burdened with high duties. Urges with much force and

intelligence the considerations in favor of some arrangement of the question.

Sir H. L. Bulwer to Mr. Webster, March, 1851. Unless the Canadian concessions are reciprocated, they will retaliate by withdrawing them. Offers the Saint Lawrence, and canals, and the fisheries of Nova Scotia and New Brunswick. Wants to know frankly whether the United States will treat or recommend legislation securing reciprocity. Incloses copy of a dispatch of June 7, 1851, from Lord Elgin, governor-general, to Sir Henry L. Bulwer, in which he expresses fears that public opinion in Canada will demand a resort to closing the canals, to levying a duty of 20 per cent. on American goods, and a return to differential duties on grain and breadstuffs, vegetables, fruits, seeds, animals, hides, wool, cheese, tallow, horns, salted and fresh meats, ores, plaster of Paris, ashes, timber, staves, and wood.

Incloses extracts to the effect that the British government are prepared to open the fisheries if the United States will admit fish free. This arrangement not to apply to Newfoundland.

The adjustment of the questions of commercial reciprocity and the fisheries was the subject of conferences between Mr. Everett^{1851-'52, Dec. 4.} and Mr. Crampton during the brief service of the former as Secretary of State, as appears in a postscript to an instruction of the 4th December, 1852, to Mr. Ingersoll, United States minister to London, but no record was kept of what transpired in those conferences. (*The instruction and P. S. above referred to are printed in Sen. Ex. Doc. No. 3, special session, March 8, 1853.*)

President Fillmore, in his annual message of 6th December, 1852,^{1852 Dec. 6} referring to the agitation of the preceding summer, on the fishery question, thinks the moment favorable for the reconsideration of the question of the fisheries, with a view to place them upon a more liberal footing of reciprocal privilege. He states that there is a willingness on the part of Great Britain to meet us in such an arrangement, which will include the subject of commercial intercourse with the British provinces. Has thought that each subject should be embraced in a separate convention. (*Sen. Ex. Doc. No. 1, 32d Cong., 2d sess.*)

The Committee on Commerce of the House of Representatives,^{1852-'53.} of which the Hon. D. L. Seymour was chairman, had under consideration sundry memorials relative to reciprocal trade, and reported House bill No. 360, accompanied by a report, with appendices, covering the subjects of reciprocal trade, the navigation of the Saint Lawrence, and the fisheries. (*Rep. No. 4, Ho. Reps., 32d Cong., 2d sess.*)

On the 2d February, 1853, Hon. D. L. Seymour, chairman of^{1853, Feb. 2.} Committee on Commerce, House of Representatives, submitted to Mr. Everett the draught of a bill referred to in the foregoing, with a view to being informed how far pending negotiations authorize the belief that the British government and provinces are prepared, on their part, to give effect to such a bill. (*The bill is printed in Appendix to Congressional Globe, 32d Cong., 2d sess., p. 198.*)

On the 4th February, 1853, Mr. Everett replied that the bill contained the most important provisions of an arrangement between the countries; but that the British minister, under his then existing instructions, was not authorized to conclude a treaty, corresponding in all respects with the bill; and suggested that, for the sake of avoiding the evils of leaving the fishery question unadjusted, Congress limit its action to the passage of a short bill, referring to the fisheries alone, providing that whenever the President shall issue his proclamation that United States fishermen are admitted to a full participation in the colonial fisheries,

colonial fish shall be admitted duty free into the United States. Such bill to be merely temporary. (*Report, Book, vol. 6, p. 492.*)

Mr. Everett, in an instruction of the 4th December, 1852, to Mr. Ingersoll, wrote that some progress was made by Mr. Webster in preparations to negotiate with Mr. Crampton on the fisheries and commercial reciprocity. President still desirous that negotiation should proceed; and it would be taken up as soon as possible. 1852, Dec. 4.

President Fillmore sent to Congress, on the 7th February, 1853, a message, inclosing report from Secretary of State, giving the state of the pending negotiation, which he, Mr. Everett, said had been diligently pursued; reported the willingness of British government to arrange the fishery question. Refers to desire for reciprocal free trade. 1853, Feb. 7.

Refers also to a resolution on the subject which passed the House some time previously, and to the attention paid to the subject by Congress. Time necessarily to be consumed in the negotiation in consequence of necessity of British minister referring to London for instructions, would probably render impossible the conclusion of a comprehensive arrangement that session. Meantime recommends that a bill admitting provincial fish free, on condition that United States fishermen are admitted to full participation of provincial fisheries, be passed that session. (*Ho. Reps., Ex. Doc. 40, 32d Cong., 2d sess.*)

16th June, 1853, Mr. Marey, in a note to Mr. Crampton, acknowledges receipt of a memorandum indicating additional subjects which British government desires to have brought into pending negotiation relative to fisheries and reciprocity trade. Deemed preferable to restrict negotiation to the objects already under discussion, though no objection exists to including other matters when obviously connected with these objects. (*Record of notes to Brit. Leg'n, vol. 7, p. 367.*) June 16.

The memorandum referred to is not on file.

In the summer of 1853, Mr. Marey discussed with Mr. Crampton the questions involved in the proposed treaty; but no record exists in this Department indicating the nature of those discussions, except a note of September 1, 1853, from Mr. Marey to Mr. Crampton, submitting a *projet* of the treaty. 1853.

Says his comments will be brief, because his views have been already presented in conferences.

Says the third article is a new one, inserted to bring in northwest coast of British possessions.

By second article of *projet* heretofore submitted by British government, and by the same article of that submitted to Mr. Crampton, and by him referred to his government, no restriction made to any part of United States coasts; therefore it is but fair to open Pacific coast of British possessions to United States fishermen. Has introduced in article 2 a clause excepting coast of Florida, not on account of value of fisheries, but apprehended interference with slave population by free blacks from Bahamas, and partly also from apprehended interference with rights of wreckers. Has excepted also shell-fish, to prevent misapprehension. Has amended the expression in the first article of the British draught, which prohibited United States fishermen from interfering "with the operations of the British fishermen," so that it will read: Provided, that in so doing they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of said coast in their occupancy, &c. Proposes modification of second article, and to

specify the rivers and estuaries which are to be excluded from operations of the first and second articles.

“In both *projets* before submitted, Newfoundland was omitted from the enumeration of the possessions to which treaty applied.” Has included it now.

The third article of the British draught, requiring the abandonment of our bounty system, is omitted, because we could not abandon the bounty to cod-fisheries.* It gives no advantage to our herring and mackerel fishermen, the classes affected by the in-shore clauses of the treaty, over the British fishermen of the same classes. The bounty is given to certain deep-sea fishermen only, to countervail the duties charged by the United States on salt, (30 per cent. *ad valorem*.)

Reciprocal clause as to canals would be nugatory, as United States own none.

Free registration of provincial-built vessels not admissible, for obvious reasons, which were stated, pp. 387, 388 of record.

Proposed privilege of clearance of British vessels from ports in United States to ports on Pacific Coast would be unconstitutional.

Has excluded from the free list all manufactures and books.

Points out the necessity for caring for the interests of the Southern and Southwestern States in making the list of free articles. Has on that ground added rice, tar, pitch, and turpentine.

Proposes to omit coal from free list, in return for which United States will omit leaf tobacco and unrefined sugar.

Furs included on free list as a concession deserving an equivalent.

The following is a copy of the *projet* :

PROJET OF TREATY.

The Government of the United States being equally desirous with Her Majesty the Queen of Great Britain to avoid further misunderstanding between their respective citizens and subjects in regard to the extent of the right of fishing on the coasts of British North America, secured to each by the first article of a convention between the United States and Her Britannic Majesty's government, signed at London on the 20th of October, 1818; and being also desirous to regulate the commerce and navigation between their respective territories and people, and more especially between Her Majesty's possessions in North America and the United States, in such manner as to render the same reciprocally beneficial and satisfactory, have respectively named plenipotentiaries, &c., &c., who have agreed upon the following articles:

ARTICLE I.

It is agreed by the high contracting parties that, in addition to the liberty secured to American fishermen by the above-named convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbors, and creeks of Canada, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the coast and shores of those colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of said coast in their occupancy for the same purpose.

It is understood that the above-mentioned liberty shall not extend to the right of fishing in the estuaries and rivers hereinafter designated; that is to say, which right is reserved exclusively for British fishermen.

ARTICLE II.

It is agreed by the high contracting parties that British subjects shall have, in common with the citizens of the United States, the liberty to take fish of every kind, ex-

* Bounties abolished by revenue act of 28th July, 1866.

cept shell-fish, on the sea-coasts and shores of the United States, (except the coasts of the State of Florida and the adjacent islands,) and on the shores of the several islands belonging thereto, and in the bays, harbors, and creeks of the United States and of the said islands, without being restricted to any distance from the shore; with permission to land upon the coasts of the United States and of the islands aforesaid, (except the coast of Florida and the adjacent islands,) for the purpose of drying their nets and curing their fish; provided that in so doing they do not interfere with the rights of private property, or with the fishermen of the United States in the use of any part of the said coasts, in their occupation for the same purpose.

It is understood that the above-mentioned liberty shall not extend to the right of fishing in the rivers and estuaries of the United States hereinafter designated; that is to say,

which right is reserved exclusively for American fishermen.

ARTICLE III.

It is agreed that the reciprocal rights and privileges granted to the citizens and subjects of the high contracting parties in the two foregoing articles (first and second) shall, to the full extent therein conceded, be enjoyed by them, respectively, to take, dry, and cure fish of any kind, except shell-fish, on the sea-coasts and shores; on the continental territories and possessions of either party; on the coasts of the Pacific Ocean, and in the bays, harbors, and creeks of the said territories and possessions; and on the coasts and shores of the adjacent islands belonging to either party, without being restricted to any distance from the shores.

ARTICLE IV.

It is agreed that the articles enumerated in the schedule hereunto annexed, being the growth and produce of the aforesaid British Colonies or of the United States, shall be admitted into each country, respectively, free of duty.

Schedule.

Grain, flour, and breadstuffs of all kinds.
 Animals of all kinds.
 Fresh, smoked, and salted meats.
 Cotton-wool, seeds, vegetables. }
 Undried fruits, dried fruits.
 Fish of all kinds.
 Poultry.
 Hides, furs, skins, or tails, undressed.
 Stone and marble in its crude or unwrought state.
 Butter, cheese, tallow.
 Lard, horns, manures.
 Ores of metals of all kinds.
 Pitch, tar, turpentine, ashes.
 Timber and lumber of all kinds: round, hewed, and sawed; manufactured in whole or in part.
 Firewood.
 Plants, shrubs, and trees.
 Pelts, wool.
 Fish-oil.
 Rice, broom-corn, bark.
 Gypsum, ground or unground.
 Hewn or wrought buhr-stones.
 Dye-stuffs.
 Flax, hemp, and tow, unmanufactured.

ARTICLE V.

It is agreed that the citizens and inhabitants of the United States shall have the right to navigate the river Saint Lawrence and the canals in Canada, used as the means of communicating with the great lakes and the Atlantic Ocean, with their vessels, boats, and crafts as fully and freely as the subjects of Her Britannic Majesty, subject only to the same tolls and other assessments as now are or may hereafter be exacted of Her Majesty's said subjects; it being understood, however, that the British government retains the right of suspending this privilege, on giving due notice thereof to the Government of the United States.

It is further agreed that if at any time the British government should exercise the said reserved right the Government of the United States shall have the right of suspending, if it think fit, the operations of Article IV, of the present treaty, for so long as the suspension of the free navigation of the river Saint Lawrence or the canals may continue.

It is also agreed that the citizens and inhabitants of the United States shall have the right to the free navigation of the river Saint John, in the province of New Brunswick, as fully and freely as the subjects of Her Britannic Majesty, and that no export duty or any other duty shall be levied on lumber or timber of any kind cut on that portion of the American territory in the State of Maine, and watered by the river Saint John and its tributaries, and floated down that river to the sea, when the same is shipped to the United States from the province of New Brunswick.

ARTICLE VI.

The present treaty shall take effect whenever the laws required to carry it into operation shall have been passed by the Imperial Parliament of Great Britain and the British provincial assemblies on the one hand, and by the Congress of the United States on the other; and shall be binding only so long as said laws, whether now existing or hereafter to be enacted, shall remain in force; and whenever the Imperial Parliament or the provincial assemblies on the one hand, and the Congress of the United States on the other, shall repeal said laws, or either of them, this treaty shall cease to be binding on the other party. Either party may, however, after the expiration of seven years, terminate the said treaty, by giving to the other one year's notice of its intention to have the same terminated and become inoperative.

1854, June 5.

On the 5th of June, 1854, the treaty was signed by Mr. Marcy and Lord Elgin, and on the 20th of the same month submitted to the Senate.

The following is a copy of the message and treaty as submitted.

To the Senate of the United States :

I transmit to the Senate for its consideration, with a view to ratification, a treaty extending the right of fishing, and regulating the commerce and navigation between Her Britannic Majesty's possessions in North America and the United States, concluded in this city on the 5th instant, between the United States and Her Britannic Majesty.

FRANKLIN PIERCE.

WASHINGTON, June 20, 1854.

The Government of the United States being equally desirous with Her Majesty the Queen of Great Britain to avoid further misunderstanding between their respective citizens and subjects, in regard to the extent of the right of fishing on the coasts of British North America, secured to each by Article I of a convention between the United States and Great Britain, signed at London, on the 20th day of October, 1818; and being also desirous to regulate the commerce and navigation between their respective territories and people, and more especially between Her Majesty's possessions in North America and the United States, in such manner as to render the same reciprocally beneficial and satisfactory, have, respectively, named plenipotentiaries to confer and agree thereupon—that is to say, the President of the United States of America, William L. Marcy, Secretary of State of the United States, and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, James, Earl of Elgin and Kincardine, Lord Bruce and Elgin, a peer of the United Kingdom, knight of the most ancient and most noble Order of the Thistle, and governor-general in and over all Her Britannic Majesty's provinces on the continent of North America, and in and over the island of Prince Edward; who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following articles :

ARTICLE I.

It is agreed by the high contracting parties that in addition to the liberty secured to the United States fishermen by the above-mentioned convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies, therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty to take fish of every kind, except shell-fish, on the sea coasts and shores, and in the bays, harbors, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore; with permission to land upon the coasts and shores of those colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea fisheries, and that the salmon and shad fisheries, and all fisheries in rivers and the mouths of rivers, are hereby reserved, exclusively, for British fishermen.

And it is further agreed that, in order to prevent or settle any disputes as to the places to which the reservation of exclusive right to British fishermen, contained in

this article, and that of fisherman of the United States, contained in the next succeeding article, apply, each of the high contracting parties, on the application of either to the other, shall, within six months thereafter, appoint a commissioner. The said commissioners, before proceeding to any business, shall make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country, upon all such places as are intended to be reserved and excluded from the common liberty of fishing under this and the next succeeding article, and such declaration shall be entered on the record of their proceedings.

The commissioner shall name some third person to act as an arbitrator or umpire in any case or cases on which they may themselves differ in opinion. If they should not be able to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the arbitrator or umpire in cases of difference or disagreement between the commissioners. The person so to be chosen to be arbitrator or umpire shall, before proceeding to act as such in any case, make and subscribe a solemn declaration in a form similar to that which shall already have been made and subscribed by the commissioners, which shall be entered on the record of their proceedings. In the event of the death, absence, or incapacity of either of the commissioners, or of the arbitrator or umpire, or of their or his omitting, declining, or ceasing to act as such commissioner, arbitrator, or umpire, another and different person shall be appointed or named as aforesaid to act as such commissioner, arbitrator, or umpire, in the place and stead of the person so originally appointed or named as aforesaid, and shall make and subscribe such declaration as aforesaid.

Such commissioners shall proceed to examine the coasts of the North American provinces and of the United States, embraced within the provisions of the first and second articles of this treaty, and shall designate the places reserved by the said articles from the common right of fishing therein.

The decision of the commissioners, and of the arbitrator or umpire, shall be given in writing in each case, and shall be signed by them respectively.

The high contracting parties hereby solemnly engage to consider the decision of the commissioners conjointly, or of the arbitrator or umpire, as the case may be, as absolutely final and conclusive in each case decided upon by them or him respectively.

ARTICLE II.

It is agreed by the high contracting parties that British subjects shall have, in common with the citizens of the United States, the liberty to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States, north of the 36th parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbors, and creeks of the said sea-coasts and shores of the United States, and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish: provided, that in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that salmon and shad fisheries, and all fisheries in rivers and mouths of rivers, are hereby reserved exclusively for fishermen of the United States.

ARTICLE III.

It is agreed that the articles enumerated in the schedule hereunto annexed, being the growth and produce of the aforesaid British colonies, or of the United States, shall be admitted into each country respectively free of duty.

Schedule.

Grain, flour, and breadstuffs of all kinds.
 Animals of all kinds.
 Fresh, smoked, and salted meats.
 Cotton-wool, seeds, and vegetables.
 Undried fruits, dried fruits.
 Fish of all kinds.
 Products of fish and of other creatures living in the water.
 Poultry, eggs.
 Hides, furs, skins, or tails undressed.
 Stone or marble, in its crude or unwrought state.
 Slate.
 Butter, cheese, tallow.
 Lard, horns, manures.

Ores of metals of all kinds.
 Coal.
 Pitch, tar, turpentine, ashes.
 Timber and lumber of all kinds, round, hewed, and sawed, unmanufactured in whole or in part.
 Firewood.
 Plants, shrubs, and trees.
 Pelts, wool.
 Fish-oil.
 Rice, broom-corn, and bark.
 Gypsum, ground or unground.
 Hewn, or wrought, or unwrought buhr or grindstones.
 Dye-stuffs.
 Flax, hemp, and tow, unmanufactured.
 Unmanufactured tobacco.
 Rags.

ARTICLE IV.

It is agreed that the citizens and inhabitants of the United States shall have the right to navigate the St. Lawrence, and the canals in Canada, used as the means of communicating between the great lakes and the Atlantic Ocean, with their vessels, boats, and crafts, as fully and freely as the subjects of Her Britannic Majesty, subject only to the same tolls and other assessments as now are, or may hereafter be, exacted of Her Majesty's said subjects; it being understood, however, that the British government retains the right of suspending this privilege on giving due notice thereof to the Government of the United States.

It is further agreed that if at any time the British government should exercise the said reserved right, the Government of the United States shall have the right of suspending, if it think fit, the operation of Article III of the present treaty, in so far as the province of Canada is affected thereby, for so long as the suspension of the free navigation of the river St. Lawrence or the canals may continue.

It is further agreed that British subjects shall have the right freely to navigate Lake Michigan, with their vessels, boats, and crafts, so long as the privilege of navigating the river St. Lawrence, secured to American citizens by the above clause of the present article, shall continue; and the Government of the United States further engages to urge upon the State governments to secure to the subjects of Her Britannic Majesty the use of the several State canals on terms of equality with the inhabitants of the United States.

And it is further agreed that no export duty, or other duty, shall be levied on lumber or timber of any kind, cut on that portion of the American territory in the State of Maine watered by the river Saint John and its tributaries, and floated down that river to the sea, when the same is shipped to the United States from the province of New Brunswick.

ARTICLE V.

The present treaty shall take effect as soon as the laws required to carry it into operation shall have been passed by the Imperial Parliament of Great Britain, and by the provincial parliaments of those of the British North American colonies which are affected by this treaty on the one hand, and by the Congress of the United States on the other. Such assent having been given, the treaty shall remain in force for ten years from the date at which it may come into operation, and further, until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its wish to terminate the same; each of the high contracting parties being at liberty to give such notice to the other at the end of the said term of ten years, or at any time afterward.

It is clearly understood, however, that this stipulation is not intended to affect the reservation made by Article IV of the present treaty with regard to the right of temporarily suspending the operation of Articles III and IV thereof.

ARTICLE VI.

And it is hereby further agreed that the provisions and stipulations of the foregoing articles shall extend to the Island of Newfoundland, so far as they are applicable to that colony. But if the Imperial Parliament, the provincial parliament of Newfoundland, or the Congress of the United States shall not embrace in their laws enacted for carrying this treaty into effect the colony of Newfoundland, then this article shall be of no effect, but the omission to make provision by law to give it effect, by either of the legislative bodies aforesaid, shall not in any way impair the remaining articles of this treaty.

ARTICLE VII.

The present treaty shall be duly ratified, and the mutual exchange of ratifications shall take place in Washington, within six months from the date hereof, or earlier if possible.

In faith whereof we, the respective plenipotentiaries, have signed this treaty and have hereunto affixed our seals.

Done, in triplicate, at Washington, the fifth day of June, anno Domini one thousand eight hundred and fifty-four.

W. L. MARCY. [L. S.]
ELGIN & KINCARDINE. [L. S.]

The Senate, by a resolution of the 2d August, 1854, sanctioned the ratification of the treaty as above presented without amend- Aug. 2, 1854.
ment.

It was ratified August 9, 1854, and exchanged September 9, August 9.
September 9.
1854.

On the 17th March, 1865, Mr. Adams, the minister of the United States at London, under instructions from the Secretary of State, gave official notice that the treaty would terminate at 1865. Mar. 17.
the expiration of one year from that date.

On the 17th of March, 1866, the President issued a proclamation declaring the treaty terminated. 1866, Mar. 17.

Sir Edward Thornton, on the 12th of July, 1869, handed to Mr. Fish a memorandum of basis of negotiation, proposing : 1869, July 12.

1. Renewal of the fishery privileges as under reciprocity treaty of 1854, with such extensions as altered circumstances may require, on condition that arrangement for trade satisfactory to Canada is made.

2. Subject to same condition, same rights of navigation of Saint Lawrence as under reciprocity treaty, and corresponding rights on other inland waters of the British possessions in North America, extended to citizens of the United States, on similar rights being extended to Canada as to the United States waters, Canada to enter into arrangements with a view of improving access to the ocean by enlargement and deepening of the canals on receiving assurance of the permanency of the commercial intercourse proposed.

3. Subject to same condition, Canada will consider the questions of mutual opening of coasting trade ;

Liberal and reciprocal arrangement of patent and copyright laws ;

Providing for extradition of persons committing any crimes but those of a political nature.

4. Transit trade to be free and unrestricted, with no other charges than necessary to protect revenue. This subject to be regulated by treaty or legislation.

5. Exchange, during such period as may be agreed upon, of the productions of the sea, forest, mines, and agriculture, and animals and their products, on reciprocal terms as nearly free as possible. Schedule of treaty of 1854 basis of new arrangement, but may be added to by both and embrace certain manufactures ; duty, if any, to have for basis internal-revenue tax of the United States.

6. Canada to adjust excise duty on spirits, beer, tobacco, and other cognate articles, on best revenue standard to be agreed on by both parties ; Canada to do all she can to prevent illicit trade between the United States and Canada. (*Volume of notes from British Legation, July 12, 1869.*)

Seventeenth March, 1870, Sir E. Thornton wrote to Mr. Fish 1870, Mar. 17.
a private and confidential letter. He had a reply to inquiries made at Mr. Fish's suggestion, whether the Canadian government would grant the free navigation of the Welland Canal and Saint Lawrence,

and put the canal into a proper state for navigation, in return for a considerable reduction in the import duties in this country on lumber, salt, fish, and coal, or a possible abolition of all duty on the first three articles. In reply, Canadian government regrets absence from the proposal of products of the most populous sections of Dominion. Of the four articles named, without knowing how much the duty on coal could be diminished, they consider that the free importation of fish would be the only satisfactory part of the proposal.

Incloses two schedules which Mr. Fish suggested would be necessary; one a free list, the other of articles which might have to be subject to certain rates of duty.

Schedule No. 1 is a free list; No. 2 a list of articles to pay a certain import duty in both countries. If they are adopted by United States, or propose not unacceptable modifications, free navigation of the Saint Lawrence and the use of the canals will be granted; and he is authorized to declare that it is the policy of Canada to maintain the greatest efficiency in canals. Asks early answer.

Schedule 1.

Hides and pelts.
 Furs, skins, and tails, (undressed.)
 Fish, fresh.
 Eggs.
 Timber and lumber, round, hewed, sawed, unmanufactured in whole or in part.
 Pitch, tar, turpentine, and ashes.
 Firewood.
 Plants, bulbs, trees, and shrubs.
 Salt.
 Broom-corn.
 Bristles.
 Ores and minerals of all kinds.
 Cotton and wool.
 Stone and marble, (unwrought.)
 Slate.
 Gypsum, unground.
 Flax, hemp, and tow, (undressed.)
 Unmanufactured tobacco.
 Rags.
 Buhr or grind stones.
 Dye-stuffs.
 Horns.
 Manures.
 Fish-oil.
 Clays, earths, and gravel.
 Emery.
 Plaster of Paris, (not ground or calcined.)
 Resin.
 Sand.
 Tanners' bark, and extracts thereof.
 Wool.

Schedule 2.

Animals of all kinds, ad valorem, $\frac{1}{2}$ 5 per cent.
 Poultry, ad valorem, 5 per cent.
 Fish, viz: Mackerel, per barrel, \$1; salmon, per barrel, \$1; herrings,

and all other fish in barrels, 50 cents; fish not in barrels, and not otherwise described, ad valorem, 5 per cent.

Meats, fresh, salted, and smoked, per pound, 1 cent.

Butter, per pound, 2 cents.

Cheese, per pound, 2 cents.

Lard, per pound, 1 cent.

Tallow, per pound, 1 cent.

Grease, and grease scraps, ad valorem, 5 per cent.

Fruits, green, dried, and undried, ad valorem, 5 per cent.

Seeds, not including cereals, ad valorem, 5 per cent.

Hay and straw, ad valorem, 5 per cent.

Bran, ad valorem, 5 per cent.

Vegetables, including potatoes and other roots, ad valorem, 5 per cent.

Hops, per pound, 5 cents.

Wheat, per bushel, 4 cents.

Barley and rye, per bushel, 3 cents.

Oats, buckwheat, and Indian corn, per bushel, 2 cents.

Pease and beans, per bushel, 2 cents.

Flour of wheat or rye, per barrel, 25 cents.

Indian and buckwheat meal, and oatmeal, per barrel, 15 cents.

Coal, per ton, 50 cents.

List of appendices, with description of contents.

No. 1. Statistics of trade with provinces for certain years, in articles on free list of reciprocity treaty.

No. 2. Report of Committee on Commerce, House of Representatives, on the operation of the treaty of 1854. Pointing ^{1862, Feb. 5.} out defects and suggesting remedies. (*Report No. 22, H. R., 37th Cong., 2d sess.*)

No. 3. Report of Secretary of Treasury to House of Representatives, in answer to a resolution, presenting statistics of trade with Canada, &c., illustrative of the working of the treaty, the Canadian tariffs of 1849 and 1862, and the rates of toll in 1864 on the Canadian canals. (*Ex. Doc. No. 32, H. R., 38th Cong., 1st sess.*)

No. 4. A report of Hon. Israel T. Hatch upon commercial relations with the British provinces and the comparative importance of American and Canadian commercial channels of transportation of property from the west to the sea-board. (*Ex. Doc. No. 78, H. R., 39th Cong., 2d sess.*)

No. 5. Reports by George W. Brega, esq., upon trade with the provinces of British North America, the free navigation of the Saint Lawrence and the Gulf fisheries. (*Ex. Docs. Nos. 240 and 295, H. R., 40th Cong., 2d sess.*)

No. 6. Report of Hon. Israel T. Hatch upon the commercial relations of the United States with the Dominion of Canada, to enable Secretary of Treasury to further answer House resolution 9th July, 1866, calling for a statement of the trade and commerce with the provinces, and a statement of the revenue derived therefrom since the termination of the treaty, and of all changes in the Canadian tariffs since that date, also of comparative importance of American and Canadian channels of transportation. (*Ex. Doc. No. 36, H. R., 40th Cong., 3d sess.*)

APPENDIX No. 1.

Statistics of trade between the United States and the British North American Provinces for certain specified years in articles which, during the existence of the reciprocity treaty, were admitted free of duty, reciprocally, into both countries.

Description.	IMPORTS FROM BRITISH NORTH AMERICA.					DOMESTIC EXPORTS TO BRITISH NORTH AMERICA.					Reciprocity treaty imports for half year ending June 30, 1855.	
	1850.	1855.	1860.	1865.	1870.	1850.	1855.	1860.	1865.	1870.		
Wheat.....	\$907,621	\$1,441,397	\$1,754,847	\$1,694,916	\$802,879	\$273,747	\$545,366	\$1,100,730	\$6,108,182	\$7,416,937	\$2,453,801	
Wheat-flour.....	1,191,004	1,832,066	3,008,175	2,970,348	352,496	1,228,502	2,247,476	4,297,521	6,737,857	3,203,817	2,338,900	
Barley.....	7,696	90,822	452	4,093,202	4,739,159	1,471	862,640	608,608	1,619,472	594,416	7,857	
Indian-corn.....	.....	.....	.....	93,401	1,275	99,844	574,130	234,987	210,702	193,047	.....	
.....	.....	.....	.....	1,812	.....	239,885	.....	.....	138,368	.....	.....	
Corn-meal.....	10,309	32,601	.....	72,999	252,786	11,702	.....	143,271	133,614	7,636	.....	
Oats.....	113,036	19,078	4,567,077	2,216,722	716,311	15,485	67,036	1,324,703	358,516	345,806	262,611	
Animals of all kinds.....	55,586	49,126	1,658,970	5,503,318	6,130,082	1618,353	1,133,140	1,236,917	2,314,811	899,637	8,093	
Fresh, smoked, and salted meats.....	8,085	4,013	392,934	830,358	(*)	.....	19,027	19,619	35,186	74,738	96,618	
Vegetables.....	37,711	129,076	426,343	296,959	15,971	5,406	19,917	130,737	435,452	136,444	96,179	
Fruits.....	482	1,627	8,605	10,590	116,331	2,737	24,320	43,860	71,330	47,694	17,901	
Fish, and products of fish.....	532,603	807,161	1,959,760	2,189,846	1,169,407	6,260	93,025	469,067	233,786	206,168	36,281	
Furs, hides, skins, or tails, undressed.....	46,270	44,569	277,974	2,432,712	1,632,832	17,502	.....	.....	137,932	36,531	.....	
Stone or marble, crude.....	.....	.....	.....	34,251	.....	.....	56,673	195,138	298,774	51,319	28,517	
Butter.....	53,276	1,403,941	505,550	608,917	.....	53,607	.....	.....	121,754	11,068	207	
Cheese.....	33	580	2,110	30,889	3,593,937	.....	27,876	54,358	152,835	44,832	35	
Tallow.....	97	13	2,153	1,016	.....	See Meat.	62,224	202,853	276,205	24,073	461	
Lard.....	2	44	1,300	2,964	.....	.....	.....	.....	.....	.....	.....	
Horns.....	.....	.....	497,403	\$1,210,004	613,106	41,362	352,568	257,179	813,794	1,048,347	.....	
Coal, bituminous, including anthracite.....	\$188,754	243,784	6,766	1,047	.....	22,064	74,076	62,526	9,434	120,640	175	
Pitch, tar, and turpentine.....	.....	.....	.....	4,515,626	118,672,828	31,882	39,816	18,292	167,492	244,503	571,727	
Timber and lumber, unmanufactured, in whole or in part.....	9,017	1,493	3,416,481	3,371,963	See above.	.....	.....	.....	.....	20,650	3,980	
Firewood.....	138,155	528,541	137,753	537,275	.....	305	782	369,376	109,770	52,411	51,993	
Wool.....	36,924	56,774	240,875	23,538	250,008	37,647	88,093	818,432	42,831	3,244	1,519	
Fish-oil.....	16,741	56,200	230,508	36,614	99,472	.....	.....	.....	.....	.....	.....	
Gypsum.....	.....	.....	23,450	60,916	.....	.....	.....	.....	.....	.....	.....	
Grindstones.....	.....	73	58,657	4,213	7,626	57,006	70,177	70,366	930,697	865,583	1,204	
Tobacco, unmanufactured.....	4	.....	.....	1,620,172	189,735	243,359	380,774	300,993	414,358	594,319	1,320,963	
Other articles, included in the free-list of the reciprocity treaty.....	31,843	7,213,616	1,130,114	30,569,608	29,255,566	3,007,592	7,012,617	11,831,653	21,645,488	16,252,327	7,197,337	
Total.....	3,433,429	13,934,504	20,446,586	30,569,608	29,255,566	3,007,592	7,012,617	11,831,653	21,645,488	16,252,327	7,197,337	

* See butter, &c. † Including lard. ‡ Fiscal year ending June 30. § Including firewood and manufactures of wood.

EDWARD YOUNG, Chief of Bureau.

BUREAU OF STATISTICS, February 16, 1871.

COMPARATIVE STATEMENT.

Table showing the values of total exports from, and of total exports to, Canada and other British North American possessions for each of the twelve fiscal years, (ended June 30,) from 1858 to 1869, inclusive.

Countries.	1858.	1859.	1860.	1861.	1862.	1863.
Imports.....	\$15,806,519	\$19,727,551	\$23,851,381	\$23,062,933	\$19,299,995	\$24,021,264
Domestic exports.....	19,638,959	21,769,627	18,667,429	18,883,715	18,652,012	28,629,110
Foreign exports.....	4,012,768	6,384,547	4,038,899	3,861,898	2,427,103	2,651,920
Countries.	1864.	1865.	1866.	1867.	1868.	1869.
Imports.....	\$38,922,015	\$38,820,969	\$54,714,383	\$33,604,178	\$30,362,221	\$32,090,314
Domestic exports.....	25,567,221	30,453,989	26,874,888	20,548,704	23,600,717	20,891,786
Foreign exports.....	2,419,926	2,097,858	2,481,684	3,774,465	2,661,555	3,305,446

V.—NORTHWEST WATER BOUNDARY AND THE ISLAND OF SAN JUAN.

SYNOPSIS.

By the 1st article of the treaty between the United States and Great Britain of the 15th of June, 1846, it was stipulated that the line of boundary between the territories of the parties on the forty-ninth parallel should stop in the middle of the channel which separates the continent from Vancouver's Island, and should proceed thence southerly through the middle of that channel and of Fuca's Straits, to the Pacific Ocean.

The point in dispute between the two governments is, as to which channel was meant by the words referred to. On the part of the United States it is contended that no other than the Haro, and on the part of Great Britain that no other than the Rosario Channel could have been in contemplation.

The United States also contend that the history of the negotiation shows that, in abandoning a claim to have the boundary of the forty-ninth parallel extended to the Pacific, and thereby relinquishing the whole of Vancouver's Island to Great Britain, they were actuated by an expectation that all other islands south of that parallel and east of the Haro Channel would fall to them. The United States also contend that the parties could not have supposed that any other channel was meant than the widest, the deepest, and the shortest between the Straits of Fuca and the mouth of Fraser River, which conditions are only fulfilled by the Haro Channel; that the navigation to and from Fuca's Straits by the Rosario Channel is comparatively circuitous, and that if that channel were to be the line, it would throw into the possession of Great Britain all the islands below the forty-ninth parallel and east of Vancouver.

The objects and intentions of the parties in agreeing to the first article of the treaty of the 15th June, 1846, seem to be well illustrated by the following antecedents to that instrument:

By the third article of the treaty between the United States and Great Britain of the 20th October, 1818, the parties agreed to a joint occupation of the territory which they might respectively claim on the northwest coast of America west of the Rocky Mountains.

By their treaty with Spain of the 22d of February, 1819, the United States acquired any title which the latter may have had in the same territory north of the forty-second parallel of latitude.

By their treaty with Great Britain of the 6th of August, 1827, the joint occupation of the territory referred to was indefinitely extended, upon the condition that if, after the 20th of October, 1828, either party should give twelve months' notice to the other, the convention would be abrogated at the expiration of the said term of notice.

The forty-second parallel of latitude was also made the southern boundary of the United States west of the Rocky Mountains, by their treaty with Mexico of April, 1831.

In a letter to Mr. Upshur, Secretary of State, of the 14th of November,

1813, Mr. Everett, United States minister to London, gives an account of an interview which he had had with Lord Aberdeen on the 6th of that month. His lordship considered that the question as to the northwestern boundary stood as it had been left by Mr. Gallatin in his negotiation with Messrs. Huskisson and Addington, in 1827. Lord Aberdeen assented to a remark of Mr. Everett, that the numerous stations which the Hudson's Bay Company had established south of the 49th degree, since 1818, though they would embarrass the British government in reference to that company, and, through them, in reference to public opinion, ought not to prejudice the claims of the United States. Mr. Everett also remarked that, in offering the line of 49°, we acted fairly and liberally; that the offer was based on the natural principles of distribution, while they, in refusing that offer and insisting on the Columbia River, disregarded such principles, and simply insisted upon a boundary very favorable to themselves. The United States offer was in accordance with the rules of the English charters, of running northern and southern boundaries from sea to sea. To an objection of Lord Aberdeen, that lines of latitude were arbitrary, Mr. Everett answered, that they were as likely to be in favor of Great Britain as of the United States, and, besides, could readily be ascertained by men of science; that the part of the boundary on the 49th parallel was the only one respecting which no controversy had arisen or was to be feared. Finally, Mr. Everett said, that an equal partition of the territory was an obvious and natural principle of division, and that the forty-ninth parallel was nearly an equal division of the region between 42° and 54° 40'. Mr. Everett said to Lord Aberdeen, that when the United States presented themselves before the tribunal of the public opinion of the world, with a statement of the nature and foundation of their claim to the whole territory, as the successors of Spain, and that they had offered to England a partition as nearly equal as could be made, reserving to themselves only the half to what they had a better independent claim than England, founded on prior discovery, occupation, and exploration, and to which they had the fair claim of contiguity and natural extension, there could not be a doubt but that the decision of that tribunal would be in their favor.

Mr. Everett went on to remark that the main difficulty in the adoption of the forty-ninth degree to the ocean was, that it had already been thrice offered to Great Britain and always rejected. To meet this difficulty, suggested Mr. Everett, it might deserve the President's consideration whether he would not agree to give up the southern extremity of Quadra and Vancouver's Island, (which the forty-ninth degree would leave within the United States,) on condition that the entrance of the Straits of Juan de Fuca should at all times be left open and free to the United States, with a free navigation between that island and the mainland, and a free outlet to the north.

In a dispatch of the 2d of December, Mr. Everett gives an account of another interview with Lord Aberdeen on the 29th of November, 1843, in the course of which his lordship stated that it would be impossible for the ministry, for the time being, to accept what had been rejected in 1824 and 1826; that they did not suppose that we, any more than themselves, could now agree to terms which we had then declined; and that, consequently, there must be concession on both sides; that they were willing to act on this principle, and that we must do the same.

Mr. Everett says that he regarded that observation, now made to him for the first time, as very important. He told Lord Aberdeen that he thought it would be very difficult for the United States to make any

modification of their former proposal, except in one point, which he regarded as very important to England. He thought the President might be induced so far to depart from the forty-ninth parallel as to leave the whole of Quadra and Vancouver's Island to England, whereas that line of latitude would give the United States the southern extremity of that island, and consequently the command of the straits of Fuca. Mr. Everett said that he was not authorized to say whether that would be agreed to, but that he thought and wished it might be. He then pointed out on a map the extent of the concession, which Lord Aberdeen said he would take into consideration.

In a dispatch of the 1st of April, 1844, Mr. Everett gives an account of another interview which he had with Lord Aberdeen on the 16th of March, in the course of which he remarked that, in proportion as his lordship should be inclined to think that the offer formerly made by the United States to continue the forty-ninth to the sea was an equitable offer, he ought to be satisfied with but a moderate departure from that proposal, particularly if such modification, without involving a great sacrifice to the United States, were eminently advantageous to Great Britain. In fact, such a modification was the only one which the United States, in Mr. Everett's opinion, could be brought to agree to. A waiver by the United States of their claim to the southern extremity of Quadra and Vancouver's Island, which would be cut off by the forty-ninth degree of latitude, was precisely of that kind. Lord Aberdeen did not commit himself as to whether such a proposition would be accepted.

In a dispatch to Mr. Calhoun, of the 28th of February, 1845, Mr. Everett, referring to the proceedings in Congress in regard to the establishment of a territorial government in Oregon, stated that he had had several conversations with Lord Aberdeen. Mr. Everett expressed an opinion founded on them, that England would never accept the naked proposition of the forty-ninth degree; but that she would accept that line with the modification to which he had referred in previous dispatches, namely: the southern extremity of Quadra and Vancouver's Island, though Lord Aberdeen had never told him that they would do this, and he was confident that this was the best boundary which the United States could get by negotiation.

In a dispatch to Mr. Buchanan, of the 3d of March, 1846, Mr. McLane referred to interviews which he had had with Lord Aberdeen, and stated that he had little or no expectation that the British government would offer or assent to a better partition than the extension of a line on the 49th parallel to the Straits of Fuca, and thence through the middle of those straits to the Pacific.

In a dispatch to Mr. Buchanan, of the 18th of May, 1846, Mr. McLane remarked: "I have now to acquaint you that, after the receipt of your dispatches on the 15th instant, by the *Caledonia*, I had a lengthened conference with Lord Aberdeen, on which occasion the resumption of the negotiation for an amicable settlement of the Oregon question, and the nature of the proposition he contemplated submitting for that purpose, formed the subject of a full and free conversation. I have now to state that instructions will be transmitted to Mr. Pakenham by the steamer of to-morrow, to submit a new and further proposition on the part of this government for a partition of the territory in dispute."

The proposition, most probably, will offer substantially: "First. To divide the territory by the extension of the line on the parallel of forty-nine to the sea; that is to say, to the arm of the sea called Birch's Bay; thence by the Canal de Arro and Straits of Fuca to the ocean, and confirming to the United States what, indeed, they would possess

without any special confirmation, the right freely to use and navigate the straits throughout its extent."

June 29, 1846, in the House of Commons, Sir Robert Peel, in tendering the resignation of the ministry, said, in reference to the termination of the existing convention for the joint occupation of Oregon by Great Britain and the United States: "It appeared to us that the addition of that conciliatory declaration—the expression of a hope that the termination of the convention might the more strongly impress upon the two countries the necessity of amicable adjustment—removed any barrier which diplomatic punctilios might have raised to a renewal by this country of the attempt to settle our differences with the United States. We did not hesitate, therefore, within two days after the receipt of that intelligence—we did not hesitate, although the offer of arbitration made by us had been rejected—to do that which, in the present state of the protracted dispute, it became essential to do, namely, not to propose renewed and lengthened negotiations, but to specify frankly and without reserve what were the terms on which we could consent to a partition of the country of the Oregon. Sir, the President of the United States met us in corresponding spirit. Whatever might have been the expressions heretofore used by him, however strongly he might have been personally committed to the adoption of a different course, he most wisely and patriotically determined at once to refer our proposals to the Senate, that authority of the United States whose consent is requisite for the conclusion of any negotiation of this kind, and the Senate, acting also in the same pacific spirit, has, I have the heartfelt satisfaction to state, at once advised acquiescence in the terms we offered. From the importance of the subject, and considering that this is the last day I shall have to address the house as a minister of the Crown, I may, perhaps, be allowed to state what are the proposals we made to the United States for the final settlement of the Oregon question. In order to prevent the necessity for renewed diplomatic negotiations, we prepared and sent out the form of a convention, which we trusted the United States would accept."

Here Sir Robert Peel quoted the language of the first article of the treaty, and, in explanation thereof, continued: "Those who remember the local conformation of that country will understand that that which we proposed is the continuation of the forty-ninth parallel of latitude till it strikes the Straits of Fuca; that that parallel should not be continued as a boundary across Vancouver's Island, thus depriving us of a part of Vancouver's Island; but that the middle of the channel shall be the future boundary, thus leaving us in possession of the whole of Vancouver's Island, with equal right to navigation of the straits. Sir, the second article of the convention we sent for the acceptance of the United States was to this effect."

Here Sir Robert Peel quoted the second article of the treaty, relating to the navigation of the Columbia River.

Continuing, he said: "Sir, I will not occupy the attention of the House with mere details. I have read the important articles."

Sir Robert further quoted an official letter from Mr. Pakenham, intimating the acceptance of the British proposals, and giving assurance of the immediate termination of differences with the United States.

Mr. Pakenham wrote, under date of June 13, that "the President sent a message on Wednesday last to the Senate, submitting for the opinion of that body the draught of a convention for the settlement of the Oregon question;" that after a few hours' deliberation on each of the three days—Wednesday, Thursday, and Friday—the Senate, by a

majority of thirty-eight votes to twelve, adopted yesterday evening a resolution advising the President to accept the terms proposed by Her Majesty's government. President Buchanan accordingly sent for me this morning, and informed me that the conditions offered by Her Majesty's government were accepted by the Government of the United States, without the addition or alteration of a single word. Thus, sir, the governments of two great nations, impelled, I believe, by the public opinion of each country in favor of peace, have by moderation, by mutual compromise, averted the dreadful calamity of a war between two nations of kindred origin and common language." (*Hansard's Debates*, vol. 87, p. 1050 *et seq.*)

Viscount Palmerston in reply said: "I should be sorry to leave one topic of the right honorable gentleman's speech after the deep pleasure which it has afforded; I mean the communication which he made, and which will be received with entire satisfaction, not only within the walls of Parliament but throughout the country, that the unfortunate differences which have arisen between this country and the United States have been brought to a termination, which, as far as we can at present judge, seems *equally favorable to both parties.*" (*Hansard's Debates*, 3d Series, vol. 87, p. 1057 *et seq.*)

The papers of which the following is a synopsis bear date subsequently to that of the treaty:

Mr. J. McHenry Boyd, chargé d'affaires of the United States at London, in a dispatch to Mr. Buchanan, Secretary of State, of the 19th of October, 1846, represents that British subjects contemplated settling on Whitby's Island, one of those within the Straits of Fuca, south of the forty-ninth parallel; that the British government had consequently been thrown into some doubt whether, according to the boundary in the Oregon treaty, that island would fall within American or British jurisdiction. Mr. Boyd accordingly suggested that if the Department was not already in possession of evidence clearly defining the line, measures should be taken toward obtaining it, for the purpose of meeting the question when it should arise.

In a dispatch to Mr. Buchanan of the 3d of November, 1846, Mr. Bancroft, then United States minister at London, requested a copy of Wilkes's chart of the Straits of Haro, it having been intimated to him that questions might arise with regard to the islands east of that strait. Mr. Bancroft requested authority to meet any such claim at the threshold, by the assertion of the central channel of Straits of Haro as the main channel intended by the recent treaty of Washington.

Mr. Buchanan complied with Mr. Bancroft's request by an instruction of the 28th of December, 1846. The instruction remarks that it was not probable that the British government would seriously claim any island east of the Canal of Haro. That no doubt that was the channel which Lord Aberdeen had in view when, in conversation with Mr. McLane, about the middle of May, 1846, he explained the character of the proposition he intended to submit through Mr. Pakenham, the British minister at Washington. This was, first, to divide the territory by the extension of the line on the parallel of 49° to the sea; that is to say, to the arm of the sea called Birch's Bay, thence by the Canal de Haro and Straits of Fuca to the ocean.

In a dispatch to Mr. Buchanan of the 29th of March, 1847, Mr. Bancroft adverts to supposed wishes of the Hudson's Bay Company to get some of the islands on our side of the line in the Straits of Fuca, and says that he would not be surprised if a formal proposition should soon be made by the British government to run the line. The proposition

would in itself be proper if there should be no ulterior motive to raise unnecessary doubts and to claim islands that are properly ours. He expressed his belief that the ministry had no such design. Some of its members would be the first to frown on it.

In a dispatch to Mr. Buchanan, of the 4th of August, 1848, Mr. Bancroft says that he had been told by Lord Palmerston that he had made a proposition at Washington for marking the boundary and for ascertaining the division line in the channel by noting the bearings of certain objects. "I observed that the water in the channel of Haro did not require to be divided, though, of course, the islands east of the center channel of Haro were ours. He spoke of the propriety of settling definitely the ownership of the several islands, in order that settlements might not be begun by one party on what properly belonged to the other."

In a note to Mr. Buchanan, of the 13th of January, 1848, Mr. Crampton stated that he had been instructed to propose that the two governments should proceed to mark the boundary defined in the treaty. After remarking upon other parts of the line, he goes on to say: "But between the Gulf of Georgia and the Straits of Fuca the line is less distinctly and accurately defined by the verbal description of the treaty by which it is established, and local circumstances render it probable that if this part of the line were not to be precisely determined, the uncertainty as to its course might give rise to disputes between British subjects and citizens of the United States." Mr. Crampton also said, in substance, that as the point in the center of the channel between Vancouver's Island and the continent could not, probably, be marked out by any object to be permanently fixed on the spot, it should be ascertained by the intersection of cross-bearings of natural and artificial landmarks.

He goes on in the following words: "But in regard to this portion of the boundary-line, a preliminary question arises, which turns upon the interpretation of the treaty rather than upon the result of local observation and survey. The convention of the 15th of June, 1846, declares that the line shall be drawn through the middle of the *channel* which separates the continent from Vancouver's Island. And upon this it may be asked what the word 'channel' intended to mean. Generally speaking, the word 'channel,' when employed in treaties, means a deep and navigable channel. In the present case it is believed that only one channel, that, namely, which was laid down by Vancouver in his chart, has, in this part of the Gulf, been hitherto surveyed and used, and it seems natural to suppose that the negotiators of the Oregon convention, in employing the word 'channel,' had that particular channel in view."

Mr. Crampton's note was accompanied by a draught of instructions to the commissioners for marking the boundary.

The receipt of the communication, however, does not appear to have been acknowledged.

With a note to Lord Palmerston of the 31st of July, 1848, Mr. Bancroft sent a copy of Wilkes's chart of the Straits of Juan de Fuca; but remarked that, though it did not extend to the parallel of 49°, it contained the wide entrance into the Straits of Haro, the channel through the middle of which the boundary was to be continued.

With a dispatch to Mr. Buchanan of the 19th of October, 1848, Mr. Bancroft sent a copy of the map of Vancouver's Island, by Wyld, geographer to the Queen. It purports to mark, by a dotted line, the boundary between the United States and Great Britain. "You will see that this map suggests an encroachment on our rights by adopting a line far to the east of the Straits of Haro."

With a note to Lord Palmerston of the 3d of November, 1848, Mr. Bancroft sent him a copy of the United States surveys of the waters of Puget Sound and those dividing Vancouver's Island from our territory. Mr. Bancroft remarked, "Your lordship will readily trace the whole course of the Channel of Haro, through the middle of which our boundary-line passes."

In a note to Mr. Bancroft of the 7th of November Lord Palmerston thanked him for the surveys.

An act of the Congress of the United States was passed on the 11th of August, 1856, providing for the demarkation of the boundary on our part. Mr. Archibald Campbell was appointed commissioner. The instructions of Mr. Marcy, Secretary of State, addressed to him in that character, bear date the 25th of February, 1857. They do not advert to any particulars in regard to the water-boundary. The following is a paragraph of the instructions :

Having completed the organization and outfit, and made the other preparations indicated, you will repair to Fuca Straits, via San Francisco, to meet the commissioner on the part of the British government, and proceed with him to determine such portion of the line described in the first article of the treaty as is provided for by the act above cited.

Captain James C. Prevost, of Her Britannic Majesty's ship *Satellite*, was the commissioner on the part of Great Britain. After divers conferences with Mr. Campbell on the subject of the water-boundary, he addressed a letter to him under date the 28th of October, 1857, setting forth his objections to the adoption of the line of the Haro Channel. These are, in substance, that when the line from the initial point in the Gulf of Georgia proceeds in a southerly direction as far as $48^{\circ} 45'$ of north latitude, it meets a group of islands through which there are two passages. One of these, called Rosario Strait, is near the continent, and the other, called Haro Channel, is nearer Vancouver's Island. He asserts that the only navigable channel separating the continent from Vancouver's Island is Rosario Strait.

He claims that the channel contemplated by the treaty should possess three characteristics : 1st. It should separate the continent from Vancouver's Island ; 2d. It should admit of the boundary-line being carried through the middle of it in a southerly direction ; 3d. It should be a navigable channel. To these conditions the Rosario Strait most entirely answers. He goes on to admit that the Haro Channel is also navigable, but on account of the currents and the want of anchorage-grounds, not so easily so. He asserts that that channel does not separate the continent from Vancouver's Island, and that the line to reach that channel must proceed for some distance in a westerly direction.

Mr. Campbell replied on the 2d of November, 1857, that as the Haro Channel was pre-eminent in width, depth, and volume of water, this must have been the one contemplated by the treaty. It was known under its name since the first discovery, and was the only one usually designated by name on the maps in use at the time the treaty was under consideration, while the other channels only separate the islands in the group from each other ; the Haro Channel for a considerable distance north of the Straits of Fuca, and where their waters unite, washes the shore of Vancouver's Island, and is therefore the only one which, according to the language of the treaty, separates the continent from Vancouver's Island.

The term southerly used in the treaty would not admit of the demarkation of the line in a due south direction through any channel. It

was consequently to be presumed that the general direction only was to be toward the south.

Rosario Straits do not separate the continent from Vancouver's Island, but some islands from others; although the relative merits of the navigability for sailing-vessels of the Haro Channel and Rosario Straits was not to be regarded as having any bearing on the determination of the question. Captain Alden, however, of the United States Navy, who, in the years 1853 and 1855, had made surveys of those waters, had officially reported the Haro Channel as the widest, deepest, and best. Reference is then made to the dispatch of Mr. McLane to Mr. Buchanan of the 18th of May, 1846, in which he reported that the line of the Haro Channel was to be proposed by the British government. Mr. Campbell thence infers that the object of the framers of the treaty was to run the line so as to avoid cutting off the southern cape of Vancouver's Island by adopting the line through the Haro Channel. The speech of Mr. Benton in the Senate relative to the treaty shows the same understanding in regard to it.

Captain Prevost replied, under date of the 9th of November, that in his opinion the Rosario Channel was the only one that conformed to the language of the treaty, by separating the continent from Vancouver's Island. The Haro Channel separates Vancouver's Island from the continent. The usual terms of expression appear to be designedly reversed in the treaty, for the lesser is not separated from the greater, but the greater from the lesser. There is no navigable channel between the continent and the islands on the east of Rosario Straits, and, therefore, no such channel as the treaty calls for. From the Gulf of Georgia to the Straits of Fuca the line can be carried through Rosario Straits in a southerly, whereas through the Haro Channel it must take a westerly direction.

The information given by Mr. McLane was as to a probable proposition. The one adopted in the treaty was different.

He then refers to Preuss's map of Oregon, printed by order of the Senate, in which the line is carried through Rosario Channel.

Mr. Campbell rejoined, under date of the 18th November, 1857, that in his judgment no change in the position of the words used in the treaty could make any difference in their meaning. Captain Prevost's admission that the Haro Channel is undoubtedly the navigable channel which, at its position, separates Vancouver's Island from the continent, might be regarded as tantamount to a settlement of the question. Although Mr. McLane and Mr. Benton were not the signers of the treaty, they had such an official connection with the negotiations that their evidence should have equal weight with that of the signers themselves. Immediately upon the receipt of Mr. McLane's dispatch of the 18th of May, Mr. Pakenham submitted to Mr. Buchanan the draught of a convention. This draught was laid before the Senate, with all the correspondence upon the subject, and was approved by that body. The draught referred to is the same, word for word, with the treaty as signed. Mr. Campbell shows that Captain Prevost's comment upon Mr. McLane's dispatch, to the effect that supposing the original proposition to have been as reported by that gentleman it was designedly altered after discussion, to be without foundation. No such discussion could have taken place between Mr. McLane and Lord Aberdeen without being reported by the former; and none could have taken place between Mr. Pakenham and Mr. Buchanan, as the former was not authorized to enter into any. Preuss's map had no official authority.

Captain Prevost replied, under date of the 24th of November, 1858, that

the continent as well as the island must be regarded according to its natural signification and according to its natural position; and that when two channels exist between a continent and a particular island, the argument appeared irresistible that the channel contiguous to the continent was the channel separating the continent from the island, while the channel contiguous to the island is the channel separating the island from the continent. The inference that the Haro Channel was proposed by the British government because that happened to be mentioned in Mr. McLane's dispatch, was unwarrantable. He would be surprised if Captain Alden should not agree with him that Rosario Straits are preferable to Haro Channel for sailing-vessels. The treaty in the matter of the channel separating the continent from Vancouver's Island was clear, and he could not admit any evidence on this subject to weigh with him that would lead to an interpretation that the precise terms of the treaty would not admit. Although he was firm in the conviction that Rosario Straits and not Haro Channel was the one contemplated by the treaty, he was willing to regard the Gulf of Georgia as one channel, and agree to a line passing through the middle of it, so far as the islands would permit.

Mr. Campbell rejoined, under date of the 28th of November, 1858, that the proposed instructions to the commissioners which accompanied Mr. Crampton's note to Mr. Buchanan, of the 13th of January, 1848, contained the following sentence: "From that point you will carry on the line of boundary along the forty-ninth parallel of latitude to the middle of the channel between Vancouver's Island and the continent."

This, Mr. Campbell contends, shows the view of the British government within two years after the conclusion of the treaty. He adds that, in 1848, Rosario Straits was not claimed on the ground that there was anything peculiar in the wording of the treaty; nor was there any claim founded upon the supposition of a "designed alteration" of the original draught of the treaty by omitting the Haro Channel and substituting its present language. In opposition to Captain Prevost's opinion that the words of the treaty were so peculiarly precise and clear as to point out unmistakably Rosario Straits as the channel, Mr. Crampton, speaking on the part of his government, says: "But between the Gulf of Georgia and the Straits of Fuca the line is less distinctly and accurately defined by the verbal description of the treaty." In regard to this, Mr. Campbell quotes the following passage from Vattel: "If he who can and ought to have explained himself clearly and plainly has not done it, it is the worse for him. He cannot be allowed to introduce subsequent restrictions which he has not expressed."

Mr. Campbell declined accepting Captain Prevost's proposition, and expressed the opinion that there was not the slightest probability that the British government, Captain Prevost, or any other person, would ever be called upon for a renewal of it.

Captain Prevost replied, under date of the 1st of December, 1857, that if the treaty was intended by the United States Government to accord with the correspondence of Mr. McLane and the speech of Mr. Benton, the general maxim which Mr. Campbell had quoted from Vattel would be more applicable to the United States than to the British government; for, if the former intended that the line should run through the Haro Channel, they should have taken care that it was so expressed "clearly and plainly" in the treaty. In conclusion, he proposed a conference, in order that it might be formally recorded that the commissioners were unable to agree; that Mr. Campbell had declined to accede to his proposition for a compromise, and, therefore, that the whole matter might be referred to their respective governments.

Mr. Campbell replied on the 2d of December, recapitulating his previous arguments, and concluding with the remark that he thought any proposition, with a view to concession on the part of United States, was hardly justifiable under the circumstances.

In a report to General Cass, Secretary of State, of the 25th of September, 1858, Mr. Campbell represents that the settlement of the question of the channel involves the sovereignty of the group of islands called the Haro Archipelago, between the Haro Channel and Rosario Straits, embraced in a space of about four hundred square miles. He then proceeds to show the importance of these islands, in a military and naval point of view, quoting official opinions of officers.

In a letter to Mr. Campbell of the 15th of June, 1858, Mr. Bancroft states that he was in Mr. Polk's cabinet when the Oregon treaty was concluded, and that the general understanding, both in England and in the United States, was, that the British boundary was to extend to the middle of the Haro Channel.

In a full and elaborate report to General Cass of the 20th of January, 1859, Mr. Campbell reviewed his proceedings as commissioner, and commented on the respective claims of the parties to the channel mentioned in the treaty. In the course of his letter Mr. Campbell expresses an opinion that the compromise line offered by Captain Prevost would not be a suitable channel for a boundary, with such channels as Haro and Rosario in its vicinity. In support of this opinion, he states the maximum and minimum width of the several channels, and refers to other important circumstances.

With a letter to the Department of the 21st of June, 1859, Mr. Campbell transmitted a copy of the Coast Survey chart of the space between the continent and Vancouver's Island, corrected by the results of a survey of the same space by Captain Richards, of the British navy, acting on behalf of his government. In the course of his letter, Mr. Campbell represents that the map adverted to shows that there is still another channel nearer to Vancouver's Island than that of Haro, which answers the description in the treaty as separating the continent from that island. The lines on the map indicate, according to Mr. Campbell's statement—

1st. The boundary-line contemplated by the treaty, as shown by contemporaneous evidence, through the middle of the Gulf of Georgia and Haro Channel, the main channel between the continent and Vancouver's Island.

2d. The boundary-line claimed by the British commissioner through the Gulf of Georgia and Rosario Straits, on the pretense that the channel which separates the continent from Vancouver's Island means the channel nearest to the continent.

3d. The boundary-line proposed by the British commissioner as a compromise through the Gulf of Georgia, a part of the Haro Channel, and the channel east of San Juan Island.

4th. The boundary-line which might be claimed by the United States in accordance with the letter of the treaty, or by adopting an interpretation of it, so as to carry out the sole object of the deviation of the boundary-line from the forty-ninth parallel to the ocean, through the Straits of Fuca, viz, to give the whole of Vancouver's Island to Great Britain.

5th. Track of steamers plying between Victoria and Fraser River since the discovery of gold.

A copy of instructions of the British government to Captain Prevost was obtained through Mr. Dallas, United States minister at London.

They bear date the 20th December, 1856, and express the opinion that the Rosario Channel was the boundary contemplated by the treaty. They use the following language: "If, however, the commissioner of the United States will not adopt the line along Rosario Straits, and if, on a detailed and accurate survey, and on weighing the evidence on both sides of the question, you should be of opinion that the claims of her Majesty's government to consider Rosario Straits as the channel indicated by the words of the treaty cannot be substantiated, you would be at liberty to adopt any other intermediate channel which you may discover on which the United States commissioner and yourself may agree, as substantially in accordance with the description of the treaty."

A copy of these instructions having been communicated to Mr. Campbell, he remarks, in a letter to the Department of the 4th of August, 1859, that they show that Captain Prevost was by them virtually, if not positively, prohibited from adopting the Haro Channel as the boundary channel intended by the treaty.

With a letter to the Department of the 18th of August, 1858, Mr. Campbell communicated information of the landing of a company of United States troops, under command of Captain Pickett, on the island of San Juan, on the 26th of July. He also communicated a copy of the protest of Governor Douglas, of Vancouver's Island, against the military occupation of that island by any other than a British force.

In a letter of Mr. Drinkard, Acting Secretary of War, to General Harney, of the 3d of September, 1859, the occupation of San Juan Island by a military force is not approved.

In a letter of Mr. Drinkard to General Scott, of the 16th of September, 1859, the wish of the President was referred to that he should take command of the military forces on the Pacific coast, and he was instructed that until the title to the island of San Juan could be adjusted it would be desirable for him to arrange for a joint occupation of that island.

This General Scott did, in a letter of the 25th of October, 1859, to Governor Douglas, of Vancouver's Island. The proposition was at first declined, but was afterward practically acceded to by the landing of a body of British marines at the north end of the island. The joint military occupation has ever since continued.

Under date the 12th of May, 1859, Lord Lyons addressed a note to General Cass relative to attempts of citizens of the United States to establish themselves on the island of San Juan, and stated that his government trusted that the United States Government would, so far as it could, restrain them from attempting to settle, by unauthorized acts of violence, a question which there would probably be little difficulty in arranging by amicable communication between the two governments.

In an instruction to Lord Lyons of the 24th of August, 1859, Lord Russell referred to the disagreement between the American and British commissioners in regard to the demarkation of the water boundary, expressed regret that no map was annexed to the treaty of 1846, but stated that his government fully concurred with their commissioner that the line should run through Rosario Straits. He then proceeded to review the arguments on both sides, and concluded by proposing the same compromise line as that offered to Mr. Campbell by Captain Prevost, and by declaring that his government must, under any circumstances, maintain its right to the island of San Juan.

This paper was fully replied to by General Cass in an instruction to Mr. Dallas of the 20th of October, 1859. After adverting to circum-

stances leading to the treaty of 1846, and stating that the object of the United States in accepting that instrument was to allow to Great Britain the whole of Vancouver's Island, but to exclude her from any other territory south of the parallel of 49°, the instruction goes on to remark that the friendly sentiments expressed in Lord Russell's paper do not harmonize with the declaration which it contained that the British government would, under any circumstances, maintain its right to the island of San Juan. If this declaration should be insisted on, said General Cass, it must terminate the negotiation at its threshold. The proposition for compromise assumes that the disagreement in respect to the treaty is irreconcilable. The failure of the commissioners to agree was in part, at least, imputable to the peculiar character of the instructions to the British commissioner. At the time of the negotiation of the treaty, all that the British government claimed was that the line should deflect from the forty-ninth parallel so far as to assign to them the whole of Vancouver's Island. This was all that the American Government conceded. Mr. Buchanan had instructed Mr. McLane that, except for this purpose, the President would never consent to bring the British boundary a single inch below the parallel of 49°, and no other purpose than this was anywhere avowed. The Haro is the only channel which would not leave something more to Great Britain south of the forty-ninth parallel than the southern cape of Vancouver's Island. Whether the Haro was or was not the true channel in the opinion of the British negotiators, it was quite certain, from current testimony of both the American and British negotiators, that the Rosario Channel was not. The Douglas Channel, which was suggested by Lord Russell, is admitted to be an inferior one, scarcely capable of navigation, except by steamers, and was supposed to be recommended because it would leave the island of San Juan to Great Britain.

In an instruction to Lord Lyons, of the 16th of December, 1859, Lord Russell replied that his government could not concur in the conclusions to which General Cass had arrived. What Lord Aberdeen meant by King George's Sound, down which the line was to run, might be clearly inferred from a letter addressed to him at the time of the conclusion of the treaty, by Sir John Pelly, then the governor of the Hudson's Bay Company, of which letter the following is an extract: "With respect to the other islands, the water demarkation line should be from the center of the water in the Gulf of Georgia, in the forty-ninth degree, along the line colored red as navigable in the chart made by Vancouver until it reaches a line drawn through the center of the Straits of Juan de Fuca. The only objection to this is giving to the United States the valuable island of Whidbey." However the British government might be disposed to rely on the instructions of Lord Aberdeen and the letter of Sir John Pelly, and the United States on the statements of Mr. McLane and Mr. Benton, it must be confessed on both sides that the interpretation of one party, without the expressed assent of the other, goes but very little way to remove the difficulty. Lord Russell concludes his paper with a direction to renew the offer of compromise.

General Cass, in an instruction to Mr. Dallas, of the 4th of February, 1860, after adverting to other points in the instruction of Lord Russell to Lord Lyons of the 16th of December, 1859, states that, as Lord Russell repeats his original declaration that no settlement of the question would be accepted by the British government which did not provide for the reservation of the island of San Juan to the British Crown, the President had directed him to state that the United States would, under all circumstances, maintain their right to the island in controversy until

the question of title to it should be determined by some amicable arrangement between the parties.

In an instruction to Lord Lyons of the 9th of March, 1860, Lord Russell refers to his declaration contained in his dispatch of the 24th of August, to which exception was taken by General Cass, and was put forward as a ground for declining to continue the discussion. Lord Russell expresses disappointment that the explanation which Lord Lyons was authorized to offer was not accepted as satisfactory, "Her Majesty's government maintain that either the Canal de Rosario or the Douglas Channel might be held to be the boundary contemplated by the treaty ; but that the Canal de Haro neither fulfills the intention of the British negotiators of the treaty, nor is consistent with the words of the treaty itself."

In an instruction to Mr. Dallas of the 23d of April, 1860, General Cass remarked that, as Lord Russell had acknowledged that the expression objected to in his dispatch of the 24th of August, 1859, was not intended to convey the meaning which this Government had attached to it, the subject was now free from the embarrassment occasioned thereby. General Cass also referred to the speech of Sir Robert Peel on the treaty in the House of Commons on the 29th of June, 1846, as showing that the deflection in the line from the parallel of 49° had not left Great Britain in the possession of any other island than that of Vancouver. "While the President, therefore, feels himself obliged to decline to adopt the Douglas Channel as the boundary of the two countries between Vancouver's Island and the continent, and to maintain the Canal de Haro as the true boundary in that quarter, which was intended by the treaty, he is glad to believe that no serious injury can be inflicted on British interests by the adoption of the American line."

In a note to General Cass of the 10th of December, 1860, Lord Lyons proposed that the question of the water boundary should be referred to the arbitration of a reigning prince or sovereign state.

No reply appears to have been made to this note.

No diplomatic discussion of the question of boundary has since taken place.

VI.—THE CLAIMS OF THE UNITED STATES AGAINST GREAT BRITAIN ON ACCOUNT OF ACTS COMMITTED BY REBEL CRUISERS.

I. CONCESSION OF BELLIGERENT RIGHTS.

The dates of the several acts which have been cited by either party in the discussion of this question are herewith given :

Fort Sumter surrendered.

1861, April 14.

President Lincoln, by proclamation, called out the militia and convened Congress.

1861, April 15.

Jefferson Davis, by proclamation, gives notice that he will grant letters of marque. (*Received by British government May 10.*)

1861, April 17.

President Lincoln issues his first proclamation of blockade, which was as follows :

1861, April 19.

By the President of the United States.

A PROCLAMATION.

Whereas an insurrection against the Government of the United States has broken out in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and the laws of the United States for the collection of the revenue cannot be effectually executed therein conformably to that provision of the Constitution which requires duties to be uniform throughout the United States ;

And whereas a combination of persons, engaged in such insurrection, have threatened to grant pretended letters of marque to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country lawfully engaged in commerce on the high seas, and in waters of the United States ;

And whereas an executive proclamation has been already issued, requiring the persons engaged in these disorderly proceedings to desist therefrom, calling out a militia force for the purpose of repressing the same, and convening Congress in extraordinary session to deliberate and determine thereon :

Now, therefore, I, Abraham Lincoln, President of the United States, with a view to the same purposes before mentioned, and to the protection of the public peace, and the lives and property of quiet and orderly citizens pursuing their lawful occupations, until Congress shall have assembled and deliberated on the said unlawful proceedings, or until the same shall have ceased, have further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States and of the law of nations in such cases provided. For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave either of the said ports, she will be duly warned by the commander of one of the blockading vessels, who will indorse on her register the fact and date of such warning, and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port, for such proceedings against her and her cargo as prize as may be deemed advisable.

And I hereby proclaim and declare that if any person, under the pretended authority of the said States, or under any other pretense, shall molest a vessel of the United States, or the persons or cargo on board of her, such persons will be held amenable to the laws of the United States for the prevention and punishment of piracy.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this nineteenth day of April, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States the eighty-fifth.

[L. S.]

ABRAHAM LINCOLN.

By the President :

WILLIAM H. SEWARD,

Secretary of State.

Troops of the United States on the way to Washington were attacked by a mob in Baltimore. Communication by railroad and telegraph between Washington and New York and north of that point was interrupted by the rebels from the 21st to the 28th April in case of telegraph, and from April 19 to May 3 and after, in case of railroad. Passengers were two or three days in making difficult and expensive transit in carriages on and after the 20th. (*Vide New York Herald.*)

The steamer Canadian sailed from Portland, taking the Boston papers of that day, with telegraphic accounts of the riots at Baltimore, and what purported to be a version of the President's proclamation, which version appeared in the London journals as hereafter stated.

The Department of State issued a circular to its representatives abroad which purported to inclose a copy of the President's first proclamation of blockade. (*Vol. I., p. 20.*)

Lord Lyons incloses an unofficial copy of a proclamation of blockade to his government, (supposed to be a newspaper version.) This note, it is stated by the British government, was received on May 10. (*Vol. I., p. 18.*)

Steamer Persia left New York for England with the New York papers up to that date.

President Lincoln's second proclamation of blockade was issued extending the blockade to Virginia and North Carolina. (*Stat. at Large, vol. 12, p. 1259.*)

Lord Lyons communicates to his government a copy of Mr. Seward's note of same date, covering a printed copy of the proclamation of the 19th of April. (*Received at British Foreign Office, May 14.*) (*Vol. I., p. 23.*)

Mr. Adams, United States minister, left Boston for his post.

Steamer Canadian arrived at Londonderry, and her news was telegraphed to London. The Daily News of May 2 contains the following paragraphs: "President Lincoln has issued a proclamation declaring a blockade of all the ports in the seceded States. '(—)' The Federal Government will condemn as pirates all privateer vessels which may be seized by Federal ships."

The steamer Canadian arrived at Liverpool on the 2d of May. On the 3d of May the Daily News published the news of the proclamation in the following language, which was repeated verbatim in the Times of the 4th of May, and, as far as known, no other copy was ever printed in the English journals:

The following is the President's proclamation of the blockade of the southern ports:

An insurrection against the Government of the United States has broken out in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas, and the law of the United States cannot be executed effectually therein conformably to that provision of the Constitution which requires duties to be uniform throughout the United States. And further, a combination of persons engaged in such insurrection have threatened to grant pretended letters of marque to authorize the bearers thereof to commit assaults on the lives, vessels, and property of good citizens of the country lawfully engaged in commerce on the high seas, and in the waters of the United States; and whereas an Executive proclamation has already been issued requiring the persons engaged in these disorderly proceedings to desist, and therefor calling out the militia force for the purpose of repressing the same, and convening Congress in extraordinary session to deliberate and determine thereon; the President, with a view to the same purposes before mentioned, and to the protection of the public peace, and the lives and property of its orderly citizens pursuing their lawful occupations, until Congress shall have assembled and deliberated on said unlawful proceedings, or until the same shall have ceased, has further deemed it advisable to set on foot a blockade of the ports within the States aforesaid, in pursuance of the laws of the United States

and the laws of nations in such cases provided. For this purpose a competent force will be posted so as to prevent the entrance and exit of vessels from the ports aforesaid. If, therefore, with a view to violate such blockade, any vessel shall attempt to leave any of the said ports, she will be duly warned by the commander of one of said blockading vessels, who will indorse on her register the fact and date of such warning, and if the same vessel shall again attempt to enter or leave a blockade port, she will be captured and sent to the nearest convenient port, for such proceedings against her and her cargo as may be deemed advisable.

A reference to the proclamation, as correctly given above, will show that there were many variations from the original; the most important of which were the omission of the formal parts of the proclamation; of the words "for the collection of the revenue;" and of the declarations as to piracy.

May 2, 1861, Lord Lyons wrote to Lord Russell as follows:

1861, May 2.

I have the honor to inclose a copy of a note by which I acknowledged the receipt of Mr. Seward's note of the 27th ultimo, announcing the intention of this Government to set on foot a blockade of the southern ports. I was careful to so word my note as to show that I accepted Mr. Seward's communication as an announcement of an intention to set on foot a blockade, not as a notification of the actual commencement of one. I believe that most of my colleagues made answers to the same sense.

I have the honor to transmit to your lordship copies of the President's proclamation announcing the extension of the blockade to the ports of Virginia and North Carolina, which have been sent to me in a blank cover from the State Department. (*Vol. I, p. 24.*)

Inclosure, Lord Lyons to Mr. Seward, April 29, 1861:

The undersigned, Her Britannic Majesty's envoy extraordinary and minister plenipotentiary to the United States of America, has the honor to acknowledge the receipt of a note of the day before yesterday's date from the Secretary of State, communicating to him a proclamation which announces, among other things, that a blockade of the ports of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas will be set on foot, in pursuance of the law of the United States and the law of nations, and that for this purpose a competent force will be posted so as to prevent the entrance and exit of vessels. (*Vol. I, p. 25.*)

The Secretary of State has, moreover, done the undersigned the honor to inform him in the same note that it is intended to set on foot also a blockade of the ports of Virginia and North Carolina.

In the House of Commons Mr. Ewart asked Lord Russell whether the government intended to place the British naval force in the Gulf of Mexico on sufficient footing, and if privateers sailing under flag of recognized power would be treated as pirates.

May 2.

Lord Russell replied that "Her Majesty's government heard the other day that the Confederate States have issued letters of marque, and to-day we have heard that it is intended there shall be a blockade of all the ports of the Southern States;" and after stating that some of the questions had been submitted to the law-officers of the Crown, he said: "We have not been involved in any way in that contest, by any act or giving any advice in the matter, and, for God's sake, let us, if possible, keep out of it." (*Vol. IV, p. 482.*)

Steamship Persia, from New York, arrived at Queenstown.

1861, May 4.

Steamship Persia arrived at Liverpool.

May 5.

House of Commons, Mr. Gregory asked Lord Russell the following question: "3d. The Government of the United States having refused to relinquish the belligerent right of issuing letters of marque, the seven Southern confederated and sovereign States having become to the United States a separate and independent and foreign power, whether Her Majesty's government recognize the right of the president of the southern confederacy to issue letters of marque; and if so, whether our minister at Washington has been notified to that effect?" (*Vol. IV, p. 482.*)

May 6.

Lord Russell, in reply, stated that, with respect to belligerent rights in the case of certain portions of a State being in insurrection, there was a precedent which seems applicable to this purpose in the year 1825. The British government at that time allowed the belligerent rights of the provisional government of Greece, and, in consequence of that allowance, the Turkish government made a remonstrance. I may state the nature of that remonstrance and the reply of Mr. Canning. "The Turkish government complained that the British government allowed to the Greeks a belligerent character, and observed that it appeared to forfeit that to subjects in rebellion no national character could properly belong." But the British government informed Mr. Stratford Canning

that the "character of belligerency was not so much a principle as a fact; that a certain degree of force and consistency acquired by any mass of population engaged in war entitled that population to be treated as a belligerent, and even if their title were questionable, rendered it the interest, well understood, of all civilized nations so to treat them. For what was the alternative? A power or a community (call it which you will) which was at war with another, and which covered the sea with its cruisers, must either be acknowledged as a belligerent or dealt with as a pirate;" which latter character, as applied to the Greeks, was loudly disclaimed. In a separate dispatch of the same date, (12th of October, 1825,) Sir Stratford Canning was reminded that when the British government acknowledged the right of either belligerent to visit and detain British merchant-vessels having enemy's property on board, and to confiscate such property, it was necessarily implied, as a condition of such acknowledgment, that the detention was for the purpose of bringing the vessels detained before an established court of prize, and that confiscation did not take place until after condemnation by such competent tribunal. The question has been under the consideration of the government. They have consulted the law-officers of the Crown. The attorney and solicitor-general and the Queen's advocate, and the government have come to the opinion that the southern confederacy of America, according to those principles, which seem to them to be just principles, must be treated as a belligerent." (*Vol. IV, p. 483.*)

House of Commons—belligerent rights at sea.—Question thereupon by Mr. Walpole, who consulted the government as to its introduction. Viscount Palmerston, in reply, stated that "the house will bear in mind that my noble friend (Lord John Russell) stated last evening that this question of international rights, as connected with belligerent rights at sea, is of grave and complicated character; that it is under the consideration of the government, and until the government shall be in a condition, after consulting its legal advisers, to make some distinct communication upon the subject, it would be inexpedient, and indeed impossible, for them to enter into any discussion upon the matter." (*Vol. IV, p. 484.*)

House of Commons—as to privateering.—Mr. Forster inquired as to status of British subjects serving on, or assisting in equipment of privateer for rebels, and whether such privateer is to be subject to forfeiture. Inquiry was made of secretary of state of home department. The reply was as follows:

"Sir GEORGE LEWIS: Sir it is in the contemplation of Her Majesty's government to issue a proclamation for the purpose of cautioning all Her Majesty's subjects against any interference in the hostilities between the Northern and Southern States of America. In that proclamation the general effect of the common and statute law on the matter will be stated." (*Vol. IV, p. 484.*)

Receipt by British government of Lord Lyons's note of April 22, inclosing unofficial newspaper copy of blockade proclamation of 19th of April.

House of Lords—question: United States; civil war; privateering.

Earl DERBY said:

I understand that a proclamation is about to be issued by Her Majesty's government on the subject of privateering and of belligerent rights. I hope that in that proclamation, or in some other way, a most distinct and emphatic warning will be given to all seamen in the service of Her Majesty as to the conditions upon which they will engage—if they choose to enter upon such hazardous enterprise—in the system of privateering. There should be no doubt left on their minds, but the fullest and plainest intimation should be publicly made to them, whether, if they do engage in such a service, they will or will not in extremity be entitled to expect any protection or interference on the part of this country. I hope my noble friend will state to your lordships whether the government have come to any conclusion upon this question; and if so, whether they are prepared forthwith to issue a public and emphatic notification of the course they intend to pursue, and the consequences likely to result to British seamen from a disregard of their warning.

Earl GRANVILLE. The noble earl, by the manner in which he has approached the subject, has evinced a becoming appreciation of the difficulties which may arise to ourselves from the unfortunate state of things in the United State. With respect, however, to the question of the belligerent rights of the parties now engaged in that unhappy contest, the noble earl has not asked for any expression of opinion on the part of the government, and therefore I am absolved from entering into a discussion of that most important, difficult, and delicate subject. But the noble earl has inquired whether

It is our intention to issue a proclamation, warning the subjects of Her Majesty against in any manner departing from that neutrality which Her Majesty herself is so desirous to observe. To that question, as the noble earl has stated, an answer has already been given in "another place," namely, that it is the intention of the government, according to precedent, to issue a proclamation, giving such warning to all the subjects of Her Majesty. The precise wording of the proclamation is a matter of considerable importance and difficulty, requiring some deliberation, and we have thought it right to obtain the best advice in framing it; but I may state that the government are anxious to make it as plain and emphatic as possible. (*Vol. IV, p. 485.*)

The British government allege that Mr. Dallas handed to the minister of foreign affairs the Department of State circular of April 20, and its accompanying copy of the proclamation of the blockade of Southern ports. There is no evidence of this fact in the Department of State. 1861, May 11.

Queen's proclamation of neutrality according belligerent rights to South. (*Vol. I, Claims, &c., p. 41.*) 1861, May 13.

In the evening Mr. Adams arrived in London. May 13.

On the morning of this day Mr. Adams was ready for business. The Queen's proclamation was issued without consultation with the United States minister, even before it was practicable for Lord Russell to see him. May 14.

Receipt by British Foreign Office of official copy of President Lincoln's proclamation of April 19, with Lord Lyons's note of April 27. 1861, May 14.

Receipt of Lord Lyons's note of May 2, communicating official copy of second proclamation of blockade, dated April 27, and extending blockade to ports of Virginia and North Carolina. 1861, May 17.

Mr. Adams's note to Mr. Seward giving an account of an interview with Lord Russell, in which he said to Lord Russell: May 17.

I must be permitted to express the great regret I had felt on learning the decision to issue the Queen's proclamation, which at once raised the insurgents to the level of a belligerent state, and still more the language used in regard to it by Her Majesty's ministers in both houses of Parliament before and since. Whatever might be the design, there could be no shadow of doubt that the effect of these events had been to encourage the friends of the disaffected here. The tone of the press and of private opinion indicated it strongly. I then alluded more especially to the brief report of the lord chancellor's speech on Thursday last, in which he had characterized the rebellious portion of my country as a belligerent state, and the war that was going on as *justum bellum*.

To this his lordship replied that he thought more stress was laid upon these events than they deserved. The fact was that a necessity seemed to exist to define the course of the government in regard to the participation of the subjects of Great Britain in the impending conflict. To that end, the legal questions involved had been referred to those officers most conversant with them, and their advice had been taken in shaping the result. Their conclusion had been that, as a question merely of *fact*, a war existed. A considerable number of the States, at least seven, occupying a wide extent of country, were in open resistance, while one or more of the others were associating themselves in the same struggle, and as yet there were no indications of any other result than a contest of arms more or less severe. In many preceding cases much less formidable demonstrations had been recognized. Under such circumstances it seemed scarcely possible to avoid speaking of this in the technical sense as *justum bellum*, that is, a war of two sides, without in any way applying an opinion of its justice, as well as to withhold an endeavor, so far as possible, to bring the management of it within the rules of modern civilized warfare. This was all that was contemplated by the Queen's proclamation. It was designed to show the purport of existing laws, and to explain to British subjects their liabilities in case they should engage in the war. And however strongly the people of the United States might feel against their enemies, it was hardly to be supposed that in practice they would now vary from their uniformly humane policy heretofore in endeavoring to assuage and mitigate the horrors of war.

To all which I answered that under other circumstances I should be very ready to give my cheerful assent to this view of his lordship's; but I must be permitted frankly to remark that the action taken seemed, at least to my mind, a little more rapid than was absolutely called for by the occasion. It might be recollected that the new administration had scarcely had sixty days to develop its policy; that the extent to which

all departments of the Government had been demoralized in the preceding administration was surely understood here, at least in part; that the very organization upon which any future action was to be predicated was to be renovated and purified before a hope could be entertained of energetic and effective labor. The consequence had been that it was but just emerging from its difficulties, and beginning to develop the power of the country to cope with this rebellion, when the British government took the initiative, and decided practically that it is a struggle of two sides; and, furthermore, it pronounced the insurgents to be a belligerent state before they had ever shown their capacity to maintain any kind of warfare whatever, except within one of their own harbors and under every possible advantage. It considered them a marine power before they had ever exhibited a single privateer on the ocean. I said that I was not aware that a single armed vessel had yet been issued from any port under the control of these people. (Vol. I, p. 183.)

1861, June 3.

Mr. Seward wrote to Mr. Adams :

Every instruction you have received from this Department is full of evidence of the fact that the principal danger in the present insurrection which the President has apprehended is that of foreign intervention, aid, or sympathy; and especially of such intervention, aid, or sympathy on the part of the government of Great Britain.

The justice of this apprehension has been vindicated by the following facts, namely: The issue of the Queen's proclamation, remarkable, first, for the circumstances under which it was made, namely, on the very day of your arrival in London, which had been anticipated so far as to provide for your reception by the British secretary, but without affording you the interview promised before any decisive action should be adopted; secondly, the tenor of the proclamation itself, which seems to recognize, in a vague manner, indeed, but still does seem to recognize, the insurgents as a *belligerent national power*. That proclamation, unmodified and unexplained, would leave us no alternative but to regard the government of Great Britain as questioning our free exercise of all the rights of self-defense guaranteed to us by our Constitution and the laws of nature and of nations, to suppress the insurrection. (Vol. I, p. 193.)

June 8.

Mr. Seward again wrote to Mr. Adams, June 8, 1861 :

Your conversation with the British secretary incidentally brought into debate the Queen's late proclamation, (which seems to us designed to raise the insurgents to the level of a belligerent state,) the language employed by Her Majesty's ministers in both houses of Parliament, the tone of the public press and of private opinion, and especially a speech of the lord chancellor, in which he had characterized the insurgents as a belligerent state, and the civil war which they are waging against the United States as *justum bellum*.

The opinions which you expressed on these matters, and their obvious tendency to encourage the insurrection and to protract and aggravate the civil war, are just, and meet our approbation. At the same time it is the purpose of this Government, if possible, consistently with the national welfare and honor, to have no serious controversy with Great Britain at all; and if this shall ultimately prove impossible, then to have both the defensive position and the clear right on our side. With this view, this Government, as you are made aware by my dispatch No. 10, has determined to pass over without official complaint the publications of the British press, manifestations of adverse individual opinion in social life, and the speeches of British statesmen, and even those of Her Majesty's ministers in Parliament, so long as they are not authoritatively adopted by Her Majesty's government. We honor and respect the freedom of debate and the freedom of the press. We indulge no apprehensions of danger to our rights and interests from any discussion to which they may be subjected, in either form, in any place. Sure as we are that the transaction now going on in our country involves the progress of civilization and humanity, and equally sure that our attitude in it is right, and no less sure that our press and our statesmen are equal in ability and influence to any in Europe, we shall have no cause to grieve if Great Britain shall leave to us the defense of the independence of nations and the rights of human nature. (Vol. I, p. 195.)

June 14.

Mr. Adams wrote to Mr. Seward, June 14, 1861 :

I next approached the most delicate portion of my task. I descanted upon the irritation produced in America by the Queen's proclamation, upon the construction almost universally given to it, as designed to aid the insurgents by raising them to the rank of a belligerent state, and upon the very decided tone taken by the President in my dispatches in case any such design was really entertained. I added that from my own observation of what had since occurred here, I had not been able to convince myself of the existence of such a design. (Vol. I, p. 198.)

1865, June 2.

Earl Russell wrote to Sir F. Bruce, June 2, 1865 :

I received, on the 25th ultimo, your dispatch of the 10th ultimo, inclosing a copy, taken from a newspaper, of a proclamation issued by the President of the United

States on that day, declaring, among other matters, that "armed resistance to the authority of this Government," namely, the Government of the United States, "may be regarded as virtually at an end; and the persons by whom that resistance, as well as the operations of insurgent cruisers, were directed, are fugitives or captives."

On the day following the receipt of your dispatch intelligence reached this country of the capture of President Davis by the military forces of the United States.

In this state of things Her Majesty's government lost no time in communicating with the government of the Emperor of the French as to the course which should be pursued by the two governments; and while these communications were in progress I received officially from Mr. Adams, on the 30th ultimo, a copy of the President's proclamation of the 10th.

It would indeed have been more satisfactory if the Government of the United States had accompanied the communication of the President's proclamation with a declaration that they formally renounced the exercise as regards neutrals of the rights of a belligerent; but Her Majesty's government considered that, in the existing posture of affairs, the delay of any formal renunciation to that effect did not afford to neutral powers sufficient warrant for continuing to admit the possession of a belligerent character by a confederation of States which had been actually dissolved. The late president of the so-called Confederate States has been captured, and transported as a prisoner to Fort Monroe; the armies hitherto kept in the field by the Confederate States have, for the most part, surrendered or dispersed; and to continue to recognize those States as belligerents would not only be inconsistent with the actual condition of affairs, but might lead to much embarrassment and complication in the relations between neutral powers and the Government of the United States.

Her Majesty's government have, accordingly, after communication with the government of the Emperor of the French, determined to consider the war which has lately prevailed between the United States and the so-called Confederate States of North America to have ceased *de facto*; and on that ground, they recognize the re-establishment of peace within the whole territory of which the United States, before the commencement of the civil war, were in undisturbed possession. (Vol. I, p. 320.)

From the time when the proclamation of neutrality was issued until the withdrawal of the concession of belligerent rights to the rebels, the United States Government were constantly making representations to the British government on this subject. These representations will be found running through the whole correspondence on the subject, as printed in the volumes of Claims.

The rights conceded to the rebels were partially withdrawn June 2, 1865, (Vol. I, *Claims*, page 378,) and finally withdrawn October 13, 1865. Vol. I, *Claims*, page 387.)

The following extract from a letter from George Bemis, esq., to the Secretary of State, dated Rome, April 20, 1870, directs attention to some of the more important parts of the correspondence contained in the volumes entitled "Claims against Great Britain," and to some important correspondence not contained in that compilation. This letter was written after the receipt of the second volume, which fact explains some apparent mistakes of the writer:

I beg to call the notice of the Department to the *grave and fundamental omissions, misarrangements, and misdesignations, contained in the Compilation as thus far executed*. It is principally in reference to these that I have hoped to make my communication of some service to the undertaking for the future.

I must premise that I do not profess even now to give a full and reliable inventory of what must be supplied or explained, but only to suggest such deficiencies as have thus far met my eye, or of which I have the means at hand of inquiring into. Thus I beg to particularize that I have little or no opportunity here, from my own memoranda, to inquire into the care or completeness with which the *manuscript (hitherto unpublished)* dispatches of the Department which I had left marked for publication have been copied and printed. The Secretary may be aware that I gave a winter's work to that task, leaving in paper-marks and pencil annotations in the manuscript volumes of the archives, to facilitate future reference to documents and parts of documents to be extracted. I desire, therefore, to be explicitly understood as excluding all that portion of the work from criticism. I would only remark in passing, however, that I think, from some memoranda which I have preserved, that I must have marked in for publication (at least) one of Mr. Adams's manuscript dispatches, No. 25, *Adams to Seward, August 8, 1861*, (in which he speaks of the British government

regarding the separation of the Union as a fixed fact,) and the *Queen's speech of prorogation of Parliament of August 6, 1861*, in which her British Majesty says—reiterating and persisting in belligerent recognition, when Mr. Seward had repudiated such a construction, even so late as August 4, 1863, (*Seward to Lyons, August 4, 1863, Alabama Compilation, vol. 1, p. 268*)—"The dissensions which arose some months ago in the United States of North America have unfortunately assumed the character of open war. Her Majesty, deeply lamenting this calamitous result, has determined, in common with the other powers of Europe, to preserve a strict neutrality between the contending parties;" two documents which I do not find in the Compilation, and which I should deem important.

But of the grave and fundamental omissions and misplacements which I would point out as essential to be supplied and rectified, I would instance at least the following:

The Parliamentary announcement of British recognition of rebel belligerency, of May 6, 1861, by Lord J. Russell,* (*Hansard's Parl. Deb., vol. 162, page 1564.*) I do not imagine that this has been overlooked by the compiler, but to rank it among "Debates" as matter for the appendix, as is perhaps designed, is as little allowable as to put the title-page of a volume into its appendix. Belligerent recognition, in my view, was not effected by the proclamation of neutrality of May 13, but by what was done and written May 6, 1861, including, besides this official parliamentary declaration or speech of Lord Russell, his two governmental dispatches of the same day, addressed to Lords Cowley and Lyons, the British ambassadors at Paris and Washington, respectively.

The Queen's proclamation of neutrality, (which, by the way, is indexed in the compilation under *Notification of Blockade*, vol. 1, page 5,) on the contrary, was never communicated or intended to be communicated, diplomatically and officially, to the United States, [see Lord Russell's treatment of this matter, *Blue Book, 1862, No. 1, p. 27—Lord Russell to Lyons, May 15*—where his lordship is willing that it shall circulate in the rebel States, but seems especially careful to give no instruction about communicating it at Washington;] but, on the other hand, what was resolved upon and declared by the British government, at the date of May 6, was diplomatically and officially communicated to the United States June 15, following; and (I am sorry to say) to the rebels on or about July 20, through the *Bunch-Trescott* mission, at Charleston, S. C. (*Compilation, vol. 1, page 135.*) If the honorable Secretary has ever scrutinized this point, he will have found, I think, that both Lord Russell and Mr. Seward consider the communication of British and French recognition of rebel belligerency to have taken effect, or, at least, been attempted, in Washington, in the personal interview of the two foreign ministers with Mr. Seward, June 15, 1861, described in the British *Blue Book, 1862, No. 3, p. 9*, (*Compilation, vol. 1, p. 62.*) under index caption *Declaration of Paris*; (!) and in the two dispatches, *Seward to Dayton*, of June 17, (*Compilation, vol. 1, p. 60.*) and *Seward to Adams*, of June 19, 1861, (*ib., p. 64.*) He will have found, furthermore, that the instruction on Lord Russell's part was originally concocted May 13, though bearing date May 18, (*Compilation, p. 110, note; ib., p. 104, "Postscript."*) [this important dispatch is omitted from page 50 of the *Compilation*,† its proper place, and given on page 107, under inclosure, *Russell to Adams*, of August 28, 1861, *ib., p. 105;*] and that the *French instruction to Mercier*, communicated in the same personal interview in Washington, bears date "May 11, 1861," (*French Yellow Book for 1861; Les États-Unis, pages 93-96;*) which communication, it seems to me, ought in historic fairness, at least, to have made part of the "Alabama Compilation;" though I have observed that it has been omitted. For further reference to Mr. Seward's sagacious and correct perception of the bearing of the British communication of rebel recognition dated May 18, cloaked under the name of the "*Declaration of Paris*," I would refer the honorable Secretary, in addition, to "Compilation," top of p. 194, given under index caption "Revocation (!) of Belligerent Recognition;" and to *Compilation, page 196*, at the bottom of the page, under same index caption, where Mr. Seward speaks of "*the promised direct communication, bringing it (rebel belligerent recognition) authoritatively before this Government in the form chosen by the British government itself.*" As for Lord Russell's and Lord Lyons's understanding that the instruction of May 18 was intended for the formal communication to the United States of the action taken by the British government on this head, see *Russell to Lyons, 2d dispatch of May 18*, (*Compilation, p. 51*, three to first five lines; also, the last two lines of the same dispatch, where Lord Russell speaks of "communicating" [this "admission of the belligerent rights of the Confederate States of America,"] "at Montgomery, to the President of the so-styled Confederate States.") See, also, *Cowley to Russell*, of May 9, (*Compilation, p. 50*, second paragraph from top,) where Cowley quotes Thouvenel as "*to precedents*" "*for recognizing belligerent rights;*" *Lyons to Russell*, June 17, 1861, (*Compilation, p. 63.*) where Mr. Seward for the moment appears to have thought that the scheme was not a covert and delusive one, but a *bona fide* attempt to reform the declaration of Paris; and *Lyons's instruction to Bunch of*

* Published on page 482, Vol. IV, Claims, &c.

† It is referred to by a foot-note on page 50.

July 5, 1861, (Compilation, p. 123,) where Lord Lyons makes the dispatch of May 18, (No. 1.) the very vehicle of communicating belligerent recognition to the rebel confederacy, through Mr. Bunch, the British consul, resident at Charleston, South Carolina. But if anything were wanting to complete this characterization of the scheme, it is to be found in the *Bunch-Trescot* papers,* where Consul Bunch puts down, in black and white, that the object of the mission was to go a step further in belligerent recognition toward full recognition of confederate independence than had been done on the 6th of May. It is for this reason that I have already ventured in my former letter to press upon the Secretary's attention the importance of these papers, and my earnest hope, if no scruple of delicacy toward Mr. Trescot exists on the part of the Government, and no fear of their exciting national hostilities, that they may be given to the world. I would add, in respect to these papers, that Mr. Trescot accompanied them with Southern newspaper-cuttings, showing the republication in those journals, in the summer of 1862, of the British parliamentary documents of May 6, 1861, &c., which cuttings I hope will make a part of the compilation publication, if such publication of them is ever to be made; and that Mr. Trescot speaks, in his record memorandum of the mission, of a long "*private*" letter of Lord Lyons to Bunch, which, if procurable, would probably be worth more than all the other documents put together. I am not certain, however, that Mr. Trescot did not orally inform Mr. Sanford, through whose patriotic exertions these valuable documents were secured to the United States Government, that he had returned this private letter to Mr. Bunch.

In regard to Lord Russell's speech† of May 6, 1861, it may perhaps be worth mentioning to the honorable Secretary, that Mr. Seward thought his lordship's quotation of Canning's dispatch of the 12th of October, 1825, (toward the close of the speech)—that in which he speaks of its being a condition-precedent to any such belligerent recognition, "that the detention by the searching vessel is for the purpose of bringing the vessels detained before an established court of prize, and that confiscation should not take place until after condemnation by such competent tribunal"—of importance enough to request Mr. Adams to endeavor to obtain the whole of the dispatch quoted; and that Mr. Adams even applied to Lord Russell personally for that purpose, but unsuccessfully.—(See MSS. correspondence in Department of State, December, 1867, to February, 1868.)

But to proceed with further omissions and misplacements:

The most important part of Lord Russell's dispatch to Lord Cowley of May 6, 1861—that part which gives the key to the whole movement, and was the launching of the Bunch mission—is left out on page 36, (where the rest is given under index caption of "*Notification of Blockade*," p. 5,) and is only given at page 48 under "*Declaration of Paris*."

On page 37 is given Lord Russell's account of his interview with the rebel emissaries Yancey, Mann, and Rost, on May 4, 1861, (the Saturday before the Monday of May 6, when our civil-war fortunes were to receive that stroke of paralysis which was to benumb them for four long years,) but omits the fuller and far more important account of the same interview, given by the emissaries themselves, under date of August 14, 1861; [a portion of this account is afterward furnished, to be sure, at page 335, under head of "*Port Regulations*," (!)]—a most important document in the history of belligerent recognition, which seems to have escaped Mr. Seward's attention in discussing the subject-matter with Lord Stanley, in January, 1867. (*Seward to Adams*,‡ January 12, 1867, U. S. Dip. Cor., 1867, pp. 45-50.)

Lord Russell's important letter to the Commissioners of the Admiralty, of May 1, 1861—which, perhaps, amounts to a recognition of rebel equality at that early day, but which certainly constitutes the only instruction given to British cruisers during the war that that government, so far as I am aware, has ever published—is given (page 33) under index caption "*Notification of Blockade*," (!) when the blockade was as yet unknown.

Lord Lyons to Lord Russell of April 22, 1861, (showing that Lord Lyons considers that but few British cotton-vessels will be on the American coast when the blockade takes effect, and that no great alarm need be apprehended from rebel cruisers,) given page 18 of the Compilation—omits the date, "*Received May 10*," (i. e., at the Foreign Office,) like Mr. Seward's official communication of the blockade, of April 19, (page 23,) that of "*May 14*," commented on in my former communication; showing that official notification of the American proclamation of blockade did not actually reach the British government, on its own showing, till twenty-four hours or more after the publication of the Queen's proclamation of neutrality.

Mr. Seward's bold and energetic letter to Mr. Adams,§ of May 21, 1861—written after hearing of the parliamentary declaration of May 6, but before any official communication of belligerent recognition, or information as to intention of issuing the proclamation of neutrality, and which letter of Mr. Seward's Lord Lyons fears the President

* The correspondence referred to by Mr. Bemis is on file in the Department of State, and will, if desired, be placed at the disposal of the High Joint Commission.

† See Compilation, vol. 4, p. 483.

‡ See Compilation, vol. 3, p. 660.

§ See Compilation, vol. 1, p. 179.

has consented to being sent," (*Lyons to Russell*, May 23, 1861, Blue Book, 1862, No. 1, page 39, and *which last*, so far as I can see, is also not given in the *Compilation*)—is only given entire (at page 179) under "*Revocation of Belligerency*," (!) The extract on the earlier page, (51,) though justly duplicated under "*Declaration of Paris*," contains no reflection or expression of that "violent explosion of wrath," which Lord Lyons refers to as exhibited in the American press generally, on the reception of the news of the proceedings in Parliament on the 6th, but which reflection of American sentiment is justly and forcibly depicted in the remainder of Secretary Seward's energetic instruction to Mr. Adams of May 21, not extracted.

And here, perhaps, in regard to index captions in vol. 1, I may remark once for all upon the imperious necessity of some explanatory, prefatory, or supplementary note, showing why the head caption "*Notification of Blockade*" is foisted into the index from pages iii to v, underneath the general title "*Recognition of Rebel Belligerency* ; why the general title itself is not resumed again on page iv ; how the "*Declaration of Paris*" connects itself with the main subject ; the same of the "*Revocation of Bunch's Exequatur* ;" what is meant by "*Port Regulations*," pages xxxiii—xxxvii ; and how "*Propositions for Mediation and Intervention*" are distinguishable from the current general title "*Recognition of Rebel Belligerency*." Nor do I understand exactly why, in the text and body of the volume from page 517 to the end, the main title of the volume and the heading of the page "*Claims against Great Britain*" is dropped, and "*Enforcement of Neutrality*" is made to occupy the heading of the left-hand page, with "*Amendment of Laws*," &c., on the right-hand side. The *Compilation* for most purposes would be far more satisfactory, I am constrained to think, without any divisions at all, and with a mere chronological juxtaposition of documentary pieces, than with such a confusing and misleading series of captions and titles. In saying this I am well aware that some of these divisions were of my own suggestion ; but with the mechanical arrangement, or rather mis-arrangement, of printing, and still more in the absence of an explanatory preface, I find that all such arrangement and distribution of my own has only led to complicated disorder.

But to hasten on with my imperfect catalogue of omissions and misarrangements under the head of "*Recognition of Rebel Belligerency*," to which I have devoted a more especial attention, I find one of the five or six demands for the recall of this recognition, as made by the United States during the course of the civil war, and the demand which of all others was most explicitly and unwarrantably refused by Great Britain, altogether omitted from that head. I allude to the demand of Mr. Seward of October 24, 1864, (*Seward to Adams*,* No. 1136, Dip. Cor. 1864, Pt. II, pp. 338-341, 342,) which was communicated to the British government by Mr. Adams, November 23, 1864, (*Adams to Seward*,† No. 821, Dip. Cor. 1865, p. 5,) and which was point-blank refused by Lord Russell, November 26, 1864, (Blue Book, 1865, No. 1, pp. 25, 27, 28, *Russell to Lyons*,‡ November 26.) The refusal is given in the *Compilation*, (vol. 1, pp. 279, &c.,) but neither Mr. Seward's instruction nor Mr. Adams's communication of the instruction which led to the refusal. A portion is of Mr. Seward's letter,§ in which the instruction is contained, is indeed given at page 676 under "*Amendment of laws*," but not the extract on pages 41, 42, (of United States Dip. Cor.,) relating to belligerent recognition, which seems to have been overlooked by the compiler. It is true that both Messrs. Seward's and Adams's entire dispatches of October 24 and November 23 are given in vol. 2, of the *Compilation*, under "*Rebel operations from Canada*," (pp. 20-36,) but the two portions of the *Belligerent-Recognition* correspondence ought not obviously to be given thus dislocated and dissevered. Especially, as it seems to me, was it desirable to bring our demand into juxtaposition with Lord Russell's volunteer communication to Slidell and Mason of November 25, 1864, (the day before,) which Slidell in his intercepted dispatch to the rebel secretary of state, (elsewhere commented on,) justly characterized as a gratuitous and extraordinary offensive insult to the Government of the United States.

I find that I have omitted to notice in their chronological order two other important dispatches, or extracts of dispatches, of the year 1862, relating to the same head of Rebel Belligerency, which ought to have been repeated, or else differently arranged, in vol. 1 of the *Compilation*. The first is *Seward to Adams*, No. 260, May 28, 1862, (Dip. Cor., 101,) a dispatch in which Mr. Seward invoked the element of slavery for the first time, as a ground for revocation of belligerency, and which dispatch both Messrs. Seward and Adams regarded as of the highest importance ; and the second, *Adams to Seward*, No. 208, August 22, 1862, (Dip. Cor., 180, 181,) highly noticeable for Mr. Adams's report that the British government would probably have recalled belligerent recognition in 1862 if McClellan's advance on Richmond had proved successful. These two dispatches are

* See *Compilation*, vol. 2, p. 20.

† See *Compilation*, vol. 2, p. 36.

‡ See *Compilation*, vol. 2, p. 67.

§ Given in full on p. 20, vol. 2, of *Compilation*.

given at pages 405, 431, of vol. 1 of the Compilation, under the topic, "*Propositions for Mediation*," &c.; but are, perhaps, lost to the subject of "*Recognition*." (See Mr. Seward's comments on Lord Russell's course, September 8, No. 336, Dip. Cor., 1862, p. 188, also omitted from the Compilation; though another extract from the same dispatch is given, vol. 1, p. 434.)

But to recur to the latter period of 1865; again I find the important dispatch of *Seward to Adams*, No. 1304, of March 15, (Dip. Cor., 1865, p. 245,) omitted from both vols. 1 and 2. This is a dispatch in which Mr. Seward makes the diminution and destruction of American commerce a specific ground of *national* claim against Great Britain, connected with the outfit in British ports of rebel cruisers, and which assumes more consequence by reason of Mr. Reverdy Johnson's recent unfounded admissions in that respect. I ought to notice, perhaps, in reference to the compilation, that Mr. Adams's fulfillment of Mr. Seward's instruction, by way of communicating this dispatch, is given at page 290 of vol. 1 of the Compilation, though somewhat varied in terms and recast as to its connection. Another dispatch of *Mr. Seward's of March 20, 1865*, (*to Seward to Adams*, No. 1310, Dip. Cor., p. 252,) five days later, also omitted, ought to have given Mr. Seward's urgent claim (at its conclusion) for the recall of belligerent recognition. Following after this period at a near interval I find more omissions under the head of "demand for revocation of rebel belligerency," which it seems to me are material deficiencies.

Dispatch No. 1350, F. W. Seward to Adams, of April 12,† (Dip. Cor., p. 309.)

Dispatch No. 973, Adams to Hunter, of June 2, § (Dip. Cor., p. 393.)

Dispatch No. 977, Adams to Hunter, of June 2, || (Dip. Cor., p. 397.)

Dispatch, (unnumbered circular,) Seward to Adams, June 7, ¶ (Dip. Cor., p. 400.)

Some or all of these are certainly necessary to tell the story of the reluctant recall by England of rebel recognition, and how easily and fairly the same measures (of merely withholding hospitality from rebel cruisers, and of according it as usual to United States ships of war) might have been practiced upon by that government from 1862 downward.

This branch of the case may be appropriately closed by printing entire the instructions of Mr. Fish to Mr. Motley, of the 25th of September, 1869, and the unsigned "notes" upon that dispatch, which were handed to Mr. Fish by Mr. Thornton on the 6th day of November, 1869.

Although an official character to the latter document was disavowed by Lord Clarendon, and it, therefore, does not form a part of the official record of the case, the fact that it was reputed to have been prepared by Lord Tenderden (then Mr. Abbott) will give it an interest in the eyes of the American commissioners.

Mr. Fish to Mr. Motley.

No. 70.]

DEPARTMENT OF STATE,
Washington, September 25, 1869.

SIR: When you left here upon your mission, the moment was thought not to be the most hopeful to enter upon renewed discussion or negotiation with the government of Great Britain on the subject of the claims of this Government against that of Her Majesty, and you were instructed to convey to Lord Clarendon the opinion of the President that a suspension of the discussion for a short period might allow the subsidence of any excitement or irritation growing out of events then recent, and might enable the two governments to approach more readily to a solution of their differences.

You have informed me that Lord Clarendon saw no objection to this course, and agreed with you that it would be well to give time for emotions which had been excited of late to subside. The President is inclined to believe that sufficient time may have now elapsed to allow subsidence of those emotions, and that thus it may be

* The extract printed on page 434 and the one on page 542 of vol. 1, Compilation constitute Mr. Seward's instruction to Mr. Adams of September 8, 1862, with the exception of three paragraphs, which treat entirely of military events transpiring in the United States at that time.

† See Compilation, vol. 1, p. 366.

‡ See Compilation, vol. 1, p. 367.

§ See Compilation, vol. 1, p. 371.

|| See Compilation, vol. 1, p. 373.

¶ See Compilation, vol. 1, p. 374.

opportune and convenient at the present conjuncture to place in your hands, for appropriate use, a dispassionate exposition of the just causes of complaint of the Government of the United States against that of Great Britain.

In order to do this in a satisfactory manner, it is necessary to go back to the very beginning of the acts and events which have in their progress and consummation so much disturbed the otherwise amicable relations of the two governments.

When, in the winter of 1860 and 1861, certain States of the American Union undertook by ordinances of secession to separate themselves from the others, and to constitute of their own volition, and by force, a new and independent republic, under the name of the Confederate States of America, there existed as between Great Britain and the United States a condition of profound peace; their political relations were professedly and apparently of the most friendly character, and their commercial and financial relations were as close and intimate in fact as they seemed to be cordial in spirit, such as became the two great, liberal, progressive, and maritime and commercial powers of the world, associated as they were by strong ties of common interest, language, and tradition.

The Government of the United States had no reason to presume that the amicable sentiments of the British government would be diminished, or otherwise prejudicially affected, by the occurrence of domestic insurrection within the United States, any more than those of the latter had been impaired by the occurrence of insurrection in British India, or might be impaired by such occurrence elsewhere in the dominions of Great Britain. Least of all could the Government of the United States anticipate hostility toward it, and special friendship for the insurgents of the seceding States, in view of the inducements and objects of that insurrection, which avowedly, and as every statesman, whether in Europe or America, well knew, and as the very earliest mention of the insurrection in the House of Commons indicated, were the secure establishment of a perpetual and exclusive slave-holding republic. In such a contest the Government of the United States was entitled to expect the earnest good-will, sympathy, and moral support of Great Britain.

It was with painful astonishment, therefore, that the United States Government received information of the decision of Her Majesty's government, which had already been made on the 6th day of May, 1861, and was announced on that day, in the House of Commons, by her ministers, and was followed by the issue, on the 13th of May, 1861, of a proclamation, which in effect recognized the insurgents as a belligerent power, and raised them to the same level of neutral right with the United States.

The President does not deny, on the contrary he maintains, that every sovereign power decides for itself, on its responsibility, the question whether or not it will, at a given time, accord the status of belligerency to the insurgent subjects of another power, as also the larger question of the independence of such subjects, and their accession to the family of sovereign states.

But the rightfulness of such an act depends on the occasion and the circumstances, and it is an act, like the sovereign act of war, which the morality of the public law and practice requires should be deliberate, seasonable, and just in reference to surrounding facts; national belligerency, indeed, like national independence, being but an existing fact, officially recognized as such; without which such a declaration is only the indirect manifestation of a particular line of policy.

The precipitancy of the declaration of the Queen's government, or, as Mr. Bright characterized it, "the remarkable celerity, undue and unfriendly haste" with which it was made, appears in its having been determined on the 6th of May, four days prior to the arrival in London of any official knowledge of the President's proclamation, (of April 19, 1861,) by reference to which the Queen's proclamation has since been defended, and that it was actually signed on the 13th of May, the very day of the arrival of Mr. Adams, the new American minister, as if in the particular aim of forestalling and preventing explanations on the part of the United States.

The prematurity of the measure is further shown by the very tenor of the proclamation, which sets forth its own reasons, namely, "Whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America." Moreover it is not pretended by the proclamation that war exists, but only a "contest," in reference to which it is not unimportant to note that the language used is such as would fitly apply to parties wholly independent one of the other, so as thus to negative, or to suppress, at least, the critical circumstance, that this bare commencement of hostilities, this incipient contest, was a mere domestic act of insurrection within the United States.

But that which conclusively shows the unseasonable precipitancy of the measure is the fact that on that day, May 13, 1861, and indeed until long afterward, not a battle had been fought between the insurgents and the United States, nor a combat even, save the solitary and isolated attack on Fort Sumter. Did such a bare commencement of hostilities constitute belligerency? Plainly not.

There was at that time no such thing as a population elevated into force, and by the prosecution of war, which Mr. Canning points out as the test of belligerent condition.

The assumed belligerency of the insurgents was a fiction, a war on paper only, not in the field, like a paper blockade; the anticipation of supposed belligerency to come, but which might never have come if not thus anticipated and encouraged by the Queen's government.

Indeed, as forcibly put by Mr. Adams, the Queen's declaration had the effect of creating posterior belligerency, instead of merely acknowledging an actual fact; and that belligerency, so far as it was maritime, proceeding from the ports of Great Britain and her dependencies alone, with aid and co-operation of subjects of Great Britain.

The Government of the United States, that of Great Britain, and other European powers, had repeatedly had occasion to consider this question in all its bearings.

It was perceived that the recognition of belligerency on the part of *insurgents*, although not so serious an act as the recognition of independence, yet might well be prejudicial to the legitimate government, and therefore be regarded by it as an act of unfriendliness. It was a step, therefore, to be taken with thoughtfulness, and with due regard to exigent circumstances. Governments had waited months, sometimes years, in the face of actual hostilities, without taking this step. But circumstances might arise to call for it. A ship of the insurgents might appear in the port of the neutral, or a collision might occur at sea, imposing on the neutral the necessity to act; or actual hostilities might have continued to rage in the theater of insurgent war, combat after combat might have been fought for such a period of time, a mass of men may have engaged in actual war until they should have acquired the consistency of military power, to repeat the idea of Mr. Canning, so as evidently to constitute the fact of belligerency, and to justify the recognition by the neutral; or the nearness of the seat of hostilities to the neutral may compel the latter to act. In either of these contingencies the neutral would have a right to act; it might be his sovereign duty to act, however inconvenient such action should be to the legitimate government. There was no such fact of necessity, no such fact of continued and flagrant existing hostilities, to justify the action of Great Britain in the present case. Hence the United States felt constrained at the time to regard this proclamation as the sign of a purpose of unfriendliness to them, and of friendliness to the insurgents, which purpose could not fail to aggravate all the evils of the pending contest, to strengthen the insurgents, and to embarrass the legitimate government. And so it proved, for as time went on, as the insurrection from political came at length to be military, as the sectional controversy in the United States proceeded to exhibit itself in the organization of great armies and fleets, and in the prosecution of hostilities on a scale of gigantic magnitude, then it was that the spirit of the Queen's proclamation showed itself in the event; seeing that in virtue of the proclamation maritime enterprises in the ports of Great Britain, which would otherwise have been piratical, were rendered lawful, and thus Great Britain became, and to the end continued to be, the arsenal, the navy-yard, and the treasury of the insurgent confederacy.

A spectacle was thus presented without precedent or parallel in the history of civilized nations. Great Britain, although the professed friend of the United States, yet, in time of avowed international peace, permitted armed cruisers to be fitted out and harbored and equipped in her ports, to cruise against the merchant-ships of the United States and to burn and destroy them, until our maritime commerce was swept from the ocean. Our merchant-vessels were destroyed piratically by captors who had no ports of their own in which to refit or to condemn prizes, and whose only nationality was the quarter-deck of their ships, built, dispatched to sea, and not seldom in name, still, professedly owned in Great Britain. Earl Russell truly said, "It so happens that in this conflict the confederates have no ports, except those of the Mersey and the Clyde, from which they send out ships to cruise against the Federals." The number of our ships thus directly destroyed amounts to nearly two hundred, and the value of property destroyed to many millions. Indirectly the effect was to increase the rate of insurance in the United States, to diminish exports and imports, and otherwise obstruct domestic industry and production, and to take away from the United States its immense foreign commerce, and to transfer this to the merchant-vessels of Great Britain, so that while in the year 1860 the foreign merchant tonnage of the United States amounted to 2,546,237 tons, in 1866 it had sunk to 1,492,923 tons. This depreciation is represented by a corresponding increase in the tonnage of Great Britain during the same period to the amount of 1,120,650 tons. And the amount of commerce abstracted from the United States and transferred to Great Britain during the same period is in still greater proportion. Thus, in effect, *war against the United States* was carried on from the ports of Great Britain by British subjects in the name of the confederates. Mr. Cobden, in the House of Commons, characterized by these very words the acts permitted or suffered by the British government: "You have been carrying on war from these shores against the United States," he said, "and have been inflicting an amount of damage on that country greater than would have been produced by many ordinary wars."

The gravity of these facts may be appreciated by considering what had happened at other periods. In the latter period of the war of the French revolution, Great Britain

was compelled to strain every nerve to maintain herself against the power of Napoleon. In such straits, by a sort of war in disguise, she trespassed on the rights of neutrals, with special prejudice to the United States, to the result, at length, of solemn war between the two nations. But neither in the events which preceded that war, nor in the events of the war itself, did the United States suffer more at the hands of Great Britain than we did during the late rebellion, by the aid, direct or indirect, which she afforded to the confederated insurgent States; for while on the ocean our merchant marine was destroyed by cruisers sent out from Great Britain, and our military marine was mainly occupied in watching and counter-working blockade-runners fitted out in Great Britain by official agents of the insurgents, on the land it was in like manner the munitions of war and the wealth drawn by the insurgents from Great Britain which enabled them to withstand, year after year, the arms of the United States. In the midst of all this, remonstrances of the Government of the United States were prompt, earnest, and persistent. Our minister in London appealed to the international amity of the British government; he called on it to discharge its obligations of neutrality; he invoked the aid of the municipal laws of Great Britain. Ample proofs of the wrongs committed were submitted to the Queen's government. Indeed, these wrongs were open, notorious—perpetrated in the face of day—the subject of debate and of boast, even, in the House of Commons.

The Queen's ministers excused themselves by alleged defects in the municipal law of the country. Learned counsel either advised that the wrongs committed did not constitute violations of the municipal law, or else gave sanction to artful devices of deceit, to cover up such violations of law. And, strange to say, the courts of England or of Scotland, up to the very highest, were occupied month after month with judicial niceties and technicalities of statute construction, in this respect, while the Queen's government itself, including the omnipotent Parliament, which might have settled these questions in an hour by appropriate legislation, sat with folded arms, as if unmindful of its international obligations, and suffered ship after ship to be constructed in its ports to wage war on the United States.

We hold that the international duty of the Queen's government in this respect was above and independent of the municipal laws of England. It was a sovereign duty attaching to Great Britain as a sovereign power. The municipal law was but a means of repressing or punishing individual wrong-doers. The law of nations was the true and proper rule of duty for the government. If the municipal laws were defective, that was a domestic inconvenience, of concern only to the local government, and for it to remedy or not by suitable legislation, as it pleased. But no sovereign power can rightfully plead the defects of its own domestic penal statutes as justification or extenuation of an international wrong to another sovereign power. When the defects of the existing laws of Parliament had become apparent, the Government of the United States earnestly entreated the Queen's minister to provide the required remedy, as it would have been easy to do by a proper act of Parliament; but this the Queen's government refused.

The United States, at an early day in their history, had set the example of repressing violations of neutrality to the prejudice of Great Britain by their own authority, and in the discharge of their own national duty, without waiting for the assistance of municipal statute. They afterward enacted such statutes for their own convenience, and as attestation of their good faith toward other nations. And on special occasions, when defects were perceived in such laws, we enacted new ones to meet the case, not deeming that such legislation was derogatory to our public dignity; but, on the contrary, conceiving that in so doing we best consulted the highest dictates of national dignity, self-respect, and public honor. And if Great Britain had so understood her national duty on this occasion, she would have done much to save the two countries from the present controversy and all its possible consequences.

Once before, in its intercourse with the United States, the Queen's government had fallen into the error of assuming that municipal laws constitute the measure of international rights and obligations; that is to say, when official agents of the British government attempted to enlist military recruits in the neutral countries of Prussia, the United States, and elsewhere, for service against Russia, on the hypothesis that, if the prohibitions of municipal law could be evaded, that would suffice, overlooking the paramount consideration of the respect due to the sovereign rights of the neutral power.

So, on the present occasion, the Queen's ministers seem to have committed the error of assuming that they needed not to look beyond their own local law, enacted for their own domestic convenience, and might, under cover of the deficiencies of that law, disregard their sovereign duties toward another sovereign power. Nor was it, in our judgment, any adequate excuse for the Queen's ministers to profess extreme tenderness of private rights, or apprehension of actions for damages, in case of any attempt to arrest the many ships which, either in England or Scotland, were with ostentatious publicity being constructed to cruise against the United States.

Surely, that was an imaginary difficulty; or if a real one, it presented the election

between a serious complication of relations with the United States and the hazard of a legal conflict with John Laird and Charles Kuhn Prioleau.

But the Government of the United States has never been able to see the force of this alleged difficulty. The common law of England is the common law of the United States. In both countries, and certainly in England, revenue seizures are made daily, and ships prevented from going to sea on much less cause of suspicion than attached to the suspected ships of the confederates.

In both countries, and not least in England, the previous order of the government, or its subsequent approval, covers the acts of the subordinate officers. In both countries, or if not in England assuredly in the United States, under municipal laws in this behalf substantially the same, the Government finds no difficulty in arresting ships charged with actual or intended violation of the sovereign rights or neutral duties of the States.

Signal examples of this occur in the history of the United States. Thus, during the late war between Great Britain and Russia, on complaints with affidavits being filed by the British consul at New York, charging that the bark Maury was being equipped there as a belligerent cruiser, and this on far less evidence than that which the American consul at Liverpool exhibited against the Alabama, the bark Maury was arrested within an hour by telegraphic order from Washington.

Other examples of the same decision and promptitude, in maintenance of the sovereign rights and discharge of the neutral duties of the United States, have occurred, as is well known, under both the last and present administrations.

Nay, at every period of our history, the Government of the United States has not been content with preventing the departure of ships fitted out in violation of neutrality, and of putting a stop to military recruitments and expeditions of the same nature, but has further manifested its good faith and its respect for its own sovereignty and laws by prosecuting criminally the guilty parties. Examples of this occur in the early stages of the war of the French revolution, on occasions of the insurrection of the Spanish-American continental provinces and of revolutionary movements in the Spanish-American republics, and on various other occasions, including the existing insurrection in Cuba.

But although such acts of violation of law were frequent in Great Britain, and susceptible of complete technical proof, notorious, flaunted directly in the face of the world, varnished over, if at all, with the shallowest pretext of deception, yet no efficient step appears to have been taken by the British government to enforce the execution of its municipal laws or to vindicate the majesty of its outraged sovereign power.

And the Government of the United States cannot believe—it would conceive itself wanting in respect for Great Britain to impute—that the Queen's ministers are so much hampered by judicial difficulties that the local administration is thus reduced to such a state of legal impotency as to deprive the government of capacity to uphold its sovereignty against local wrong-doers, or its neutrality as regards other sovereign powers.

If, indeed, it were so, the causes of reclamation on the part of the United States would only be the more positive and sure; for the law of nations assumes that each government is capable of discharging its international obligations; and, perchance, if it be not, then the absence of such capability is itself a specific ground of responsibility for consequences.

But the Queen's government would not be content to admit, nor will the Government of the United States presume to impute to it, such political organization of the British empire as to imply any want of legal ability on its part to discharge, in the amplest manner, all its duties of sovereignty and amity toward other powers.

It remains only in this relation to refer to one other point, namely, the question of *negligence*; neglect on the part of officers of the British government, whether superior or subordinate, to detain confederate cruisers, and especially the Alabama, the most successful of the depredators on the commerce of the United States.

On this point the President conceives that little needs now to be said, for various cogent reasons.

First, the matter has been exhaustively discussed already by this Department, or by the successive American ministers.

Then, if the question of negligence be discussed with frankness, it must be treated in this instance as a case of extreme negligence, which Sir William Jones has taught us to regard as equivalent or approximate to evil intention. The question of negligence, therefore, cannot be presented without danger of thought or language disrespectful toward the Queen's ministers, and the President, while purposing, of course, as his sense of duty requires, to sustain the rights of the United States in all their utmost amplitude, yet intends to speak and act in relation to Great Britain in the same spirit of international respect which he expects of her in relation to the United States, and he is sincerely desirous that all discussions between the governments may be so conducted as not only to prevent any aggravation of existing differences, but to tend to such reasonable and amicable determination as best becomes two great nations of common origin and conscious dignity and strength.

I assume, therefore, premitting detailed discussion in this respect, that the negligence of the officers of the British government in the matter of the Alabama, at least, was gross and inexcusable, and such as indisputably to devolve on that government full responsibility for all the depredations committed by her. Indeed, this conclusion seems in effect to be conceded in Great Britain. At all events, the United States conceive that the proofs of responsible negligence in this matter are so clear that no room remains for debate on that point, and it should be taken for granted in all future negotiations with Great Britain.

It is impossible not to compare and contrast the conduct of the States General, as regards Great Britain on occasion of the revolt of the British colonies, with that of Great Britain as regards the insurrection in the Southern States. No fleets were fitted out by America in the ports of the Netherlands to prey on the commerce of Great Britain. Only in a single instance did American cruisers have temporary harborage in the Texel. Year after year the exports of munitions of war for the Netherlands were forbidden by the States General, the more completely to fulfill their duty of amity and neutrality toward Great Britain; but, nevertheless, Great Britain treated a declaration of neutrality by the States General, and the observance of that declaration, as a sufficient cause of war against the Netherlands; prior to which the British government continually complained of the occasional supplies derived by the colonies from the island of St. Eustatius. How light, in this respect, would have been the burdens of the United States during the late insurrection if British aid had been confined to a contraband commerce between the insurgents and the port of Nassau.

Not such is the complaint of the United States against Great Britain. We complain that the insurrection in the Southern States, if it did not exist, was continued, and obtained its enduring vitality, by means of the resources it drew from Great Britain. We complain that by reason of the imperfect discharge of its neutral duties on the part of the Queen's government, Great Britain became the military, naval, and financial basis of insurgent warfare against the United States. We complain of the destruction of our merchant-marine by British ships manned by British seamen, armed with British guns, dispatched from British dock-yards, sheltered and harbored in British ports. We complain that, by reason of the policy and the acts of the Queen's ministers, injury incalculable was inflicted on the United States.

Nevertheless, the United States manfully and resolutely encountered all the great perils and difficulties of the situation, foreign and domestic, and overcame them. We endured, with proud patience, the manifestation of hostility there, where we had expected friendship, in England, the protagonist of the abolition of negro servitude, in order to perpetuate which the Southern States had seceded from the Union. We entered on a great war, involving sea and land; we marched to the field hundreds of thousands of soldiers and expended thousands of millions of treasure for their support; we lavished the blood of our bravest and best in battle, as if it were but water; we submitted to all privations without a murmur; we staked our lives, our fortunes, and our honor on the issue of the combat; and, by the blessing of God, we came out of the deadly struggle victorious, and with courage proved, strength unimpaired, power augmented, and our place fixed among the nations second to none, we may without presumption say, in the civilized world. Providence had smiled on our sacrifices and our exertions; and in the hour of supreme triumph we felt that, while mindful of goodwill shown us by friendly powers in the hour of trial, we could afford to account in moderation with others, which, like Great Britain, had, as we thought, speculated imprudently, and to their own discomfiture, on the expected dismemberment and downfall of the great American republic.

As to Great Britain, we had special and peculiar causes of grief. She had prematurely, as we deemed it, and without adequate reason, awarded the status of belligerency to our insurgents. But this act of itself, and by its inherent nature, was of neutral color, and an act which, howsoever we might condemn it in the particular case, we could not deny to be of the competency of a sovereign state. Other European governments also recognized the belligerency of the insurgents; but Great Britain alone had translated a measure indefinite of itself into one of definite wrong to the United States; as evinced by the constant and efficient aid in ships and munitions of war which she furnished the confederates, and in the permission or negligence which enabled confederate cruisers from her ports to prey on the commerce of the United States. Great Britain alone had founded on that recognition a systematic maritime war against the United States. And this, to effect the establishment of a slave government; as to which Mr. Bright might well say, "We supply the ships; we supply the arms, the munitions of war; we give aid and comfort to the foulest of crimes; *Englishmen only* do it." Thus, what in France, in Spain, as their subsequent conduct showed, had been but an untimely and ill-judged act of political manifestation, had in England, as her subsequent conduct showed, been a virtual act of war. We reflected that the confederates had no ships, no means of building ships, no mechanical appliances, no marine, no legal status on the sea, no open sea-ports, no possible courts of prize, no domestic command of the instruments and agencies of modern maritime warfare. We asked ourselves what would the Queen's govern-

ment have said if the United States had awarded the rights of belligerency to insurgents in India, or in Ireland, in the same circumstances, that is, on the occurrence of a single act of rebel hostility, and had bestowed upon them their only means of maritime as well as territorial warfare against Great Britain?

In truth, while, in the hour of their great triumph, the United States were thankfully inclined to sentiments of moderation, both at home and abroad—for at home no man has suffered death for political causes—were the more inclined to moderation, especially, as regards Great Britain, in view of the very enormity of the wrongs we had sustained, and the consequent difficulty of measuring the reparation due, even if sincerely proffered by the Queen's government—we desired no war with England; we shrank from the thought of another lustrum of fratricidal carnage, like that through which we had just passed, with no change in the conditions of war but the substitution, on one side, of misguided Englishmen in the place of misguided Americans. We preferred, if possible, to find some satisfaction of our great grievances by peaceful means, consistent alike with the honor of Great Britain and of the United States. The influence of this condition of mind is apparent in all the discussions of the subject by or under the instruction of this Department during preceding administrations of the Government. It resulted in earnest efforts on our part to determine the controversy by arbitration in the interest of peace and of international good-will, which efforts, if promptly met by the Queen's ministers in the spirit in which they were made, would long since have removed the present controversy from the field of diplomacy, and effectually harmonized the relations of the United States with Great Britain.

But the amicable advances of the United States to dispose of the question by arbitration were at the start, and persistently long afterward, met by Lord Russell, in the name of the Queen's government, with subtleties of reservation and exception, the effect of which would have been, instead of closing up the controversy, to leave us in a condition worse than before, and more perilous to the cause of peace.

The Government of the United States has never been able to appreciate the force of the reasons alleged in support of such reservations and exceptions. When one power demands of another the redress of alleged wrongs, and the latter entertains the idea of arbitration as the means of settling the question, it seems irrational to insist that the arbitration shall be a qualified and limited one, through apprehensions lest, peradventure, there might thus be implication that such wrongs had been committed by intention, and that such implication would be injurious to the honor of the wrong-doing government. On these premises arbitration may be the means of adjusting immaterial international wrongs, but not of material ones; that is to say, if the grievances be serious, the two nations must of necessity go to war, while neither desires it, which would be an absurd conclusion.

Lord Stanley and Lord Clarendon appear to have seen this, and therefore to have regarded the particular question with more correct estimation of its incidents than Lord Russell, and thereupon to have admitted as theory comprehensive arbitration concerning all questions between the governments.

But the convention, which in this view was negotiated by the Earl of Clarendon and Mr. Reverdy Johnson, did not prove satisfactory to the Senate of the United States.

It is well known to the government of Great Britain that the President and the Senate of the United States are distinct powers of the Government, associated in the conclusion of treaties and in the appointment of public officers, but not dependent one on the other, nor of necessity entertaining the same opinion on public questions. Each acts on appropriate convictions of duty and of right, and the Senate has the same absolute power to reject a treaty as the President has to negotiate one.

Of course it is not necessarily incumbent on the President to express approval or disapproval of an act of the Senate.

But the President deems it due to the Senate, to himself, and to the subject, to declare that he concurs with the Senate in disapproving of that convention. His own particular reasons for his conclusion are sufficiently apparent in this dispatch. In addition to these general reasons, he thinks the provisions of the convention were inadequate to provide reparation for the United States in the manner and to the degree to which he considers the United States entitled to redress. Other and special reasons for the same conclusions have been explained in a previous dispatch—such, namely, as the time and circumstances of the negotiation, the complex character of the proposed arbitration, its chance, agency, and results, and its failure to determine any principle, or otherwise to fix on a stable foundation the relations of the two governments.

The President is not yet prepared to pronounce on the question of the indemnities which he thinks due by Great Britain to individual citizens of the United States, for the destruction of their property by rebel cruisers fitted out in the ports of Great Britain.

Nor is he now prepared to speak of the reparation which he thinks due by the British government for the larger account of the vast *national* injuries it has inflicted on the United States.

Nor does he attempt now to measure the relative effect of the various causes of injury, as whether by untimely recognition of belligerency, by suffering the fitting out of rebel

cruisers, or by the supply of ships, arms, and munitions of war to the confederates, or otherwise, in whatsoever manner.

Nor does it fall within the scope of this dispatch to discuss the important changes in the rules of public law, the desirableness of which has been demonstrated by the incidents of the last few years now under consideration, and which, in view of the maritime prominence of Great Britain and the United States, it would befit them to mature, and propose to the other states of Christendom.

All these are subjects of future consideration ; which, when the time for action shall arrive, the President will consider with sincere and earnest desire that all differences between the two nations may be adjusted amicably and compatibly with the honor of each, and to the promotion of future concord between them ; to which end he will spare no effort within the range of his supreme duty to the rights and interest of the United States.

At the present stage of the controversy, the sole object of the President is to state the position and maintain the attitude of the United States in the various relations and aspects of this grave controversy with Great Britain. It is the object of this paper (which you are at liberty to read to Lord Clarendon) to state calmly and dispassionately, with a more unreserved freedom than might be used in one addressed directly to the Queen's government, what this Government seriously considers the injuries she has suffered. It is not written in the nature of a claim, for the United States now make no demand against her Majesty's government on account of the injuries they feel that they have sustained.

Although the United States are anxious for a settlement on a liberal and comprehensive basis of all the questions which now interfere with the entirely cordial relations which they desire to exist between the two governments, they do not now propose or desire to set any time for this settlement. On the contrary, they prefer to leave that question, and also the more important question of the means and method of removing the causes of complaint, of restoring the much desired relations of perfect cordiality, and the preventing of the probability of like questions in the future, to the consideration of her Majesty's government. They will, however, be ready, whenever her Majesty's government shall think the proper time has come for a renewed negotiation, to entertain any proposition which that government shall think proper to present, and to apply to such propositions their earnest and sincere wishes and endeavors for a solution honorable and satisfactory to both countries.

I am, sir, your obedient servant,

HAMILTON FISH.

[Inclosure in No. 7.]

Observations on Mr. Fish's dispatch to Mr. Motley of September 25, 1869, respecting the Alabama, &c., claims.

I.—THE QUEEN'S PROCLAMATION OF NEUTRALITY.

Mr. Fish recapitulates the arguments previously used by Mr. Seward as to the "precipitate recognition" of belligerent rights, which, he says, "appears in its having been determined on the 6th of May, four days prior to the arrival in London of any official knowledge of the President's proclamation of the 19th of April, 1861." * * *

* and "signed on the 13th of May—the very day of the arrival of Mr. Adams, the new American minister, as if in the particular aim of forestalling and preventing explanations on the part of the United States."

The facts are—

The President's proclamation of blockade was published April 19. Intelligence of its issue was received by telegraph (see the Times) on the 2d of May.

It was published in the Daily News and other papers on the 3d of May. Mr. Seward, in his dispatch to Mr. Adams of the 12th of January, 1867, says, "it reached London on the 3d of May."

A copy was received officially from her Majesty's consul at New York on the 5th ; another copy, from Lord Lyons, on the 10th.

It was communicated officially by Mr. Dallas to Lord Russell on the 11th, with a copy of a circular from Mr. Seward to the United States ministers abroad, dated the 20th of April, calling attention to it, and stating the probability that attempts would be made to "fit out privateers in the ports of England for the purpose of aggression on the commerce of the United States."

The reason of the delay in receiving the copy from Washington was in itself a proof of the existence of civil war, arising, as it did, from the communication between

Washington and Baltimore being cut off, in consequence of the confederate troops threatening the capital.

The prematureness of the measure is further shown by the very tenor of the proclamation: "Whereas hostilities have unhappily commenced between the Government of the United States of America and certain States styling themselves the Confederate States of America." Exception is also taken to the use of the word "contest" as distinct from "war."

It will be seen, on referring to the report of the royal commission for inquiring into the neutrality laws, (Appendix,) that the form of words used is taken from previous proclamations: "Whereas hostilities at this time exist," (June 6, 1823;) "engaged in a contest," (September 30, 1825, Turkey and Greece;) "Whereas hostilities have unhappily commenced," (May 13, 1859, Austria, France, and Italy.) The same form was used in the case of Spain and Chili, (February 6, 1866,) and Spain and Peru, (March 13, 1866.) "Hostilities have unhappily commenced," (Austria, Prussia, Italy, Germany, June 27, 1866.)

The order prohibiting prizes from being brought into British ports, for which the United States Government thanked the British government, as being likely to give a death-blow to privateering, speaks of "observing the strictest neutrality in the contest which appears to be imminent," (June 1, 1861.)

It is remarkable that in the case of Turkey and Greece, British subjects were warned to respect "the exercise of belligerent rights." This is omitted in the United States case, the belligerents being spoken of as "the contending parties."

The expression, "States styling themselves the Confederate States of America," was purposely adopted to avoid the recognition of their existence as independent States, and gave them great offense.

The French proclamation of the 10th of June has "*la lutte engagée entre le Gouvernement de l'Union et les Etats prétendant former une Confédération particulière.*"

The Spanish proclamation, which the United States minister at Madrid (see Diplomatic Correspondence laid before Congress, 1861, p. 224) informed the Spanish government "the President had read with the greatest satisfaction," issued on the 17th of June, 1861, has "Confederate States of the South," and uses the term "belligerent" three times over.

Mr. Fish's dispatch states that the "assumed belligerency" was a "fiction," the "anticipation of supposed belligerency to come, but which might never have come if not thus anticipated and encouraged by the Queen's government."

What are the facts? A large group of States, containing a population of several millions, and comprising a compact geographical area, enabling them to act readily in concert, had established a *de facto* government, with a president, congress, constitution, courts of justice, army, and all the machinery of military and civil power. They possessed the ports along upward of 2,000 miles of coast; with the exception of Forts Pickens and Monroe, all the Federal posts and forts had been evacuated, including Harper's Ferry, the arsenal of the Potomac Valley. Fort Sumter, the only one which had offered resistance, had fallen a month previously, April 13. The confederate troops were in occupation of the Shenandoah lines, and threatening Washington. The confederate president had declared war, and called for a levy of 32,000 troops, to which all the seceded States had responded promptly. On the other hand, the Federal President had called for 75,000 volunteers on the 15th of April, and for 42,000 more on the 3d of May; and as fast as the regiments could be armed they were hurrying to the defense of Washington. The contending armies were, indeed, face to face.

So much for the hostilities on land. The operations at sea, in which British interests were more directly affected, had been carried on with equal vigor. On the 17th of April the confederate president issued his proclamation offering to grant letters of marque, which was followed, two days afterward, by the Federal proclamation of blockade. At the date of the Queen's proclamation of neutrality both these had been carried, or were being carried, into effect. The Federal Government had instituted the blockade of Virginia and North Carolina, which was declared to be effective on the 30th of April, and were rapidly dispatching all the merchant-vessels which they could procure, and which they were able to convert into ships-of-war, to the blockade of the other ports. The General Parkhill, of Liverpool, was captured by the United States ship Niagara while attempting to run the blockade of Charleston, on the 12th of May; and the British vessels Hilja and Monmouth warned off on the same day. Confederate privateers were already at sea. One was captured at the mouth of the Chesapeake River on the 8th of May by the United States ship Harriet Lane. On the 15th the Federal bark Ocean Eagle, of Rockhead, Maine, was taken by the confederate privateer Calhoun off New Orleans. At the same port Captain Semmes had already received his commission, and was engaged in the outfit of the Sumter.

Could any explanations which Mr. Adams might have had to offer alter such a state of things as this? Can any other name be given to it than that of civil war?

It is stated that there was no fact of continued and flagrant "hostilities" to justify the action of Great Britain in issuing a proclamation of neutrality.

Mr. Seward writing at the time, and previously to the Queen's proclamation, (May 4,) characterized the proceedings of the confederates as "open, flagrant, deadly war," and as "civil war," (Congress Papers, 1861, page 165;) and in a communication to M. de Tassara, the Spanish minister, referred to the operations of the Federal blockade as belligerent operations which would be carried on with due respect to the rights of neutrals.

Judge Betts, in the cases of the *Hiawatha*, &c., said: "I consider that the outbreak in particular States, as also in the confederated States, was an open and flagrant civil war."

It is also judicially decided by the Supreme Court of the United States, in the case of the *Amy Warwick* and other prizes, that "the proclamation of blockade is itself official and conclusive evidence that a state of war existed which demanded and authorized such a measure." Moreover, the joint resolution of Congress, in July, 1861, approving and confirming the acts of the President, (North America, No. 1, 1862," page 57,) commences: "Whereas, since the adjournment of Congress on the 4th of March last, a formidable insurrection in certain States of this Union has arrayed itself in armed hostility;" and a resolution of the House of Representatives of the 22d of July, 1861, speaks of the "present deplorable civil war" and of "this war."

The date at which the civil war actively commenced has, therefore, been fixed by the published dispatches of the Secretary of State, by proceedings in Congress, by the formal judgment of the United States prize-courts, as well as by the universal assent of all the neutral powers concerned; but it is urged that, nevertheless, there was no necessity for Great Britain to take notice of it, as no ship of the insurgents had appeared in British ports, no collision occurred at sea, nor did the nearness of Great Britain to the seat of hostilities compel her to act.

With regard to the latter point, it is difficult to see how one nation can be much nearer to another than England to the United States, seeing that the British dominions touch the United States on two sides, while the British islands of New Providence, &c., lie immediately in front. As to a collision at sea, it was apparent that British commerce must be interfered with the moment the blockade came into operation, as indeed was the case, several British vessels having been captured before there was time for the intelligence of the proclamation of neutrality to reach America. As to the arrival of confederate ships in British ports, such ships were afloat and might at any time be expected. As Mr. Dana, in the notes to the eighth edition of Wheaton, expresses it, (p. 35,) "it is not fit that cases should be left to be decided as they may arise, by private citizens, or naval or judicial officers, at home or abroad, by sea or land."

The British government were compelled to take action of some sort. Was that action really unfriendly; was it intended to be unfriendly?

No one who recollects what actually passed, or will consult "Hansard," can suppose that the proclamation was intended to be unfriendly. On the contrary, as was stated by Mr. Forster in his speech at Bradford, it was absolutely pressed upon the government by the friends of the Northern States, who were afraid lest confederate privateers should be fitted out in British ports.

Nor was its immediate result injurious to the Federal States. Far from being so, it legitimized the captures of the blockading squadron, and, in the language of the prize-court, "estopped" the British merchants, whose vessels were seized, from making reclamation.

While the intelligence of the issue of the Queen's proclamation was still fresh, and almost immediately after hearing of the French and Spanish proclamations of neutrality, the President, in his message of the 4th of July, 1861, stated that he was "happy to say that the sovereignty and rights of the United States are now practically respected by foreign powers, and a general sympathy with the country is manifested throughout the world."

Does any one really believe that the Queen's proclamation in the very least influenced the movements of the confederate armies? All the preparations for war had been made long before, munitions collected, troops levied, and generals appointed. The proclamation reached America at the end of May, by which time the confederates had taken up their position on the Upper Potomac, and the Federals had occupied Alexandria, in Virginia, with a force of thirteen thousand men, May 24.

The armies on both sides were in motion; skirmishes were daily occurring; engagements took place at Little Bethel on the 10th of June, at Carthage, Missouri, on the 6th of July, and at Centreville on the 18th, followed by the great battle of Manassas Junction on the 21st. Can any one suppose that if the proclamation had not been issued that battle would not have been fought?

The charge of premature recognition, on examination, reduces itself to this, that the proclamation ought not to have been issued until Mr. Adams arrived, or until some event called for it. Against this is to be set the fact that the proclamation was considered by some friends of the Northern States as a step taken in their interests, and

that it was further pressed upon the government by Mr. Dallas's communication of Mr. Seward's circular. Moreover, confederate privateers were at sea, and British vessels being made prizes by the Federal blockading fleet.

Besides the assertion of the premature recognition of belligerent rights, the dispatch states that maritime enterprises in the ports of Great Britain which would otherwise have been piratical were, "by virtue of the proclamation," rendered lawful, "and thus Great Britain became, and to the end continued to be, the arsenal, the navy-yard, and the treasury of the insurgent confederacy."

Mr. Fish, in a preceding passage, admits that national belligerency is "an existing fact," and he might have added that it exists independently of any official proclamations of neutral powers, as is shown by the records of the American prize-courts, which continually recognize the belligerency of the South American States; although, as Mr. Seward stated in one of his dispatches, the United States have never issued a proclamation of neutrality except in the case of France and England, in 1793. This was proved in the civil war by the reception at Curaçoa of the confederate vessel *Sumter* as a belligerent cruiser, though the Netherlands had issued no proclamation of neutrality. It was this recognition of the *Sumter*, after her departure from New Orleans, (July 6, 1861,) at Curaçoa, and at Cienfuegos, which first practically accorded maritime belligerent rights to the confederates, a fact which is overlooked when it is alleged that confederate "belligerency, so far as it was maritime," proceeded "from the ports of Great Britain and her dependencies alone."

Indeed, it is not going too far to say that the confederates derived no direct benefit from the proclamation. Their belligerency depended upon the fact (a fact which, when we are told that the civil war left behind it two millions and a half of dead and maimed, is unfortunately indisputable) that they were waging civil war. If there had been no proclamation, the fact would have remained the same, and belligerency would have had to be recognized either on behalf of the Northern States by admitting the validity of captures on the high seas for the carriage of contraband or breach of blockade, or on the arrival of the *Sumter*, or some similar vessel, in a British port.

In no case can it be really supposed that the recognition of belligerency, which, unless neutral nations abandoned their neutrality and took an active part in the contest, was inevitable, materially influenced the fortunes of such a fearful and protracted civil war.

At all events, if it did, the confederates never acknowledged it; the recognition of belligerency they regarded (as indeed was the case) as a right which could not be denied to them. What they sought was not the mere technical title of "belligerents," but a recognition of independence; and when they found that it was hopeless to expect England to accord it, they cut off all intercourse with this country, expelled her Majesty's consuls from their towns, and did everything in their power to show the sense which they entertained of the injury which they believed had been inflicted upon them. The result being that, while one side has blamed us for doing too much, the other side has blamed us for doing too little; and thus an assumption of neutrality has been regarded both by North and South as an attitude of hostility.

As to the Queen's proclamation, rendering lawful the dispatch of the *Alabama*, *Shenandoah*, and *Georgia*, from British ports, to which it is to be presumed the expression "maritime enterprise" refers, it is to be remarked that it is exactly against such enterprises that the proclamation reciting the terms of the foreign enlistment act was intended to warn British subjects. Instead of rendering them lawful, it rendered them additionally unlawful, by giving notice of their illegality.

There would be no difficulty in showing by precedents from American prize-courts that no proclamation of neutrality is required to confer belligerent rights on vessels commissioned by a *de facto* government.

It is admitted that at the time these "enterprises" were undertaken "hostilities" in America were being prosecuted "on a scale of gigantic magnitude." After, therefore, the *Alabama* escaped on the 29th of July, 1862, she became, by virtue of her confederate commission, undoubtedly a belligerent cruiser, irrespective of any acknowledgment of belligerency by Great Britain, and was received accordingly by the French authorities at Martinique, where she first touched after leaving Liverpool.

A pirate is *hostis humani generis*, one owing obedience to no authority. If the *Alabama* had been really a pirate depredating on American commerce, it would have been the duty of the French to seize her and execute justice on her commander and crew, a pirate being triable wheresoever found.

Judge Nelson, in the case of the confederate privateer *Savannah*, ruled that though confederate privateers were pirates *quoad* American jurisdiction, they were not pirates *jure gentium*; and, in the case of the *Golden Rocket*, in which the owner brought an action in an American court against an insurance company for the capture of his ship by the *Florida*, he being insured against piracy, but not against war risk, it was decided that captures by confederate cruisers were not "piracy" within the usual meaning of the word, and that the company was not liable.

The American courts having thus conclusively dealt with the matter, it is unneces-

sary to pursue the subject further. What is probably meant is that, if the confederates had not possessed a *de facto* government, and had not been belligerents in the sense of waging public war, vessels under their commission would have been mere roving adventurers, pursuing merchantmen for the sake of private plunder; in short, pirates; but by the admission that "hostilities" (the very word to which exception is taken in the neutrality proclamation) were being prosecuted on a great scale, the only ground on which such a supposition could rest is cut away.

II.—THE DISPATCH OF CONFEDERATE CRUISERS FROM BRITISH PORTS.

Any one who read the dispatch, without any previous knowledge of the subject, might suppose, from the language used, that fleets of privateers had been dispatched from British ports with the connivance, if not with the direct support, of her Majesty's government.

"Great Britain * * * permitted armed cruisers to be fitted out," &c.

"The Queen's government * * * suffered ship after ship to be constructed in its ports to wage war in the United States."

"Many ships * * * were, with ostentatious publicity, being constructed."

"Permission or negligence which enabled confederate cruisers from her ports to prey," &c.

"Great Britain alone had founded on that recognition a systematic maritime war," * * * "a virtual act of war."

"Suffering the fitting out of rebel cruisers."

The fact being that *only one vessel*, of whose probable belligerent character the British government had any evidence, escaped, viz, the *Alabama*.

The *Shenandoah* was a merchant-ship, employed in the India trade, under the name of *Sea King*. Her conversion into a confederate cruiser was not heard of until more than a month after she had left England.

The *Georgia* or *Japan* was actually reported by the board of trade surveyor, who had no idea of her destination, to be built as a merchant-ship, and to be rather crank. Nothing was known of her proceedings until she had taken her arms and crew on board in Morlaix Bay and reached Cherbourg. Her real point of departure, as a cruiser, was France and not England.

The *Florida* was detained at Nassau on suspicion, but discharged by the local admiralty court, there being no evidence of her being anything but a blockade-runner. She was fitted out as a ship of war at Mobile.

On the other hand, the British government prevented the outfit of the *Rappahanock*, prosecuted and detained the *Alexandria*, seized the *Liverpool* rams, and stopped the *Pampero*, besides investigating carefully every case of suspected outfit brought forward by Mr. Adams, and he complained of nineteen, as well as every case which could be discovered independently. Among other things, taking charge of Captain Osborne's Anglo-Chinese flotilla, which it was apprehended might fall into the hands of the confederates, at a cost to this country of £100,000.

That any sea-going steamer can be converted into a cruiser by strengthening her bulk-heads and arming her, which can be done at sea as well as on shore, is proved by the fact that the most efficient blockading vessels in the Federal Navy were converted blockade-runners.

The Alabama.—Mr. Fish speaks of the neglect of the officers of the British government to detain confederate cruisers, and especially the *Alabama*.

There was no neglect to detain the *Shenandoah* or *Georgia*, for the reason that neither the government nor its officers knew they were being intended for the confederate service. Indeed, it has never been proved that the persons who sold those vessels knew it. Probably they did, but a case might very readily arise in which the vendors might be really ignorant. The American government could not have expected the English revenue officers to prevent every large steamer leaving England in ballast.

With regard to the *Alabama*, it is assumed "that the negligence of the officers of the British government was gross and inexcusable, and such as to indisputably to devolve on that government full responsibility for all the depredations committed by her. Indeed, this conclusion seems in effect to be conceded in Great Britain. At all events, the United States conceive that the proofs of responsible negligence in this matter are so clear that no room remains for debate on that point; and it *should be taken for granted in all future negotiations with Great Britain*."

By a *petitio principii*, the whole argument is thus assumed to be in favor of the United States.

There is no doubt that the *Alabama* might, if she had not escaped at the moment when the case against her appeared to be legally established, have been seized and tried under the foreign enlistment act, though the result, looking to what occurred in the case of the *Alexandra*, might have been doubtful.

This, however, is a very different thing from admitting that her sale to the confederates was a violation of British neutrality for which the nation is responsible. This

was the first instance which occurred of the sale of a ship under such circumstances, and the British government had, in fact, no suspicion of what was going to be done in the matter, no information having been received of an intention to take out her arms and crew in a separate vessel.

Judge Story, in the well-known case "*Santissima Trinidad and Santander*," laid it down as indisputable that "there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale. It is a commercial venture which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation."

But it must be remembered that when Mr. Fish claims compensation for *all* her depredations, he should not overlook the fact of the negligence shown by the Federal Navy in twice letting her escape from them. First, when Mr. Adams urged the captain of the Federal ship, which at his instance had gone to Holyhead to look after her, to pursue her, when the captain refused and went off to his station at Gibraltar instead—a proceeding at which Mr. Adams expressed the greatest indignation; (see Congress Papers, 1862, p. 159;) and secondly, when the United States ship "*San Jacinto*" blockaded her in the French port of St. Pierre, Martinique, and then suffered her to slip away at night from under her bows.

III.—SUPPLIES FURNISHED TO THE CONFEDERATES BY BRITISH SUBJECTS.

Mr. Fish states that the confederates had no ships, no mechanical appliances, no open sea-ports, &c., and implies that the maritime force of the confederates was entirely derived from England.

The Sumter, Nashville, and Florida, however, all sailed from confederate ports in which they were armed and fitted out, besides a variety of small coasting privateers, such as the Tallahassee, whose captures form a considerable item in the list of Federal maritime losses lately presented to Congress.

"On the land it was in like manner the munitions of war and the wealth drawn by the insurgents from Great Britain which enabled them to withstand, year after year, the arms of the United States."

If, as Mr. Fish states, the confederates had no open sea-ports, how did these munitions and arms reach them?

Either the blockade was inefficient, in which case it was illegal, and neutral nations were not bound to respect it, or it was efficient, as it was recognized by Great Britain to be, and the supply of arms, &c., was hazardous and uncertain.

There is no doctrine more clearly settled than that neutral nations are not responsible for the supplies of contraband sent through a blockade by their subjects. Indeed, the very existence of a blockade implies this, for, if it were the duty of neutrals to prevent the shipment of supplies to belligerents, why should there be a blockade at all? Each side would claim compensation for the assistance rendered to the other, and neutrality would become impossible.

If once it be conceded that blockade-running is an offense against neutrality in a civil war, the precedent would not fail to be invoked in all wars by whichever belligerent considered himself most aggrieved. Instead of establishing a principle in the interests of future peace, this would lead to endless complications and claims and counter-claims, which would make the end of one war the sure beginning of another.

The question of the action of the Dutch in the war of independence cannot be dealt with without a review of the history of the period, for which this memorandum does not afford space. An account of the proceedings at Saint Eustache, and subsequent discussions with the Dutch government, will be found in De Marten's "*Nouvelles Causes Célèbres du Droit des Gens*."

As to the supplies sent through the blockade having been organized by confederate agents in England, the example was set them by the bureau established by Franklin at Paris for the assistance of the American provinces.

On the other hand, it is notorious that the Federal troops were plentifully provided with arms and munitions from this country.

Her Majesty's government have yet to learn that it has been held in international discussions that individuals are precluded from supplying belligerents with munitions of war.

IV.—INDIRECT INJURY TO AMERICAN COMMERCE.

"Indirectly the effect was to increase the rate of insurance in the United States, to diminish exports and imports, and otherwise obstruct domestic industry and production, and to take away from the United States its immense foreign commerce and to transfer this to the merchant-vessels of Great Britain."

Mr. Fish proceeds to quote figures, showing the decrease in American tonnage between 1860 and 1866.

This allegation of national, indirect or constructive, claims was first brought forward officially by Mr. Reverdy Johnson in his attempt to renew negotiations on the claims convention in March last. (North America, No. 1, 1869, page 46.)

Mr. Thornton has shown the difficulty there would be in computing the amount of claim even if it were acknowledged, (North America, No. 1, 1869, page 53,) in a dispatch in which he mentions the continual decrease of American tonnage.

This is partly, no doubt, to be ascribed to the disturbance of commercial relations consequent on a long war, partly to the fact that many vessels were nominally transferred to British owners during the war to escape capture. Sir E. Hornby, in a recent report, states that this was a constant practice in China.

Is not, however, a good deal of it to be attributed to the high American tariff, which makes the construction of vessels in American ports more expensive than ship-building in England, and has thereby thrown so large a proportion of the carrying trade into English hands?

There must be some such cause for it, or otherwise American shipping would have recovered its position since the war, instead of continuing to fall off.

"Neither in the events which preceded that war," (of 1812,) "nor in the events of the war itself, did the United States suffer more," &c.

No one can now wish to recall to recollection the particular events of that war; it would be much better for the two nations to congratulate themselves that one of the principal causes of it, the nationality dispute, has, it is to be hoped, been set at rest finally by Lord Stanley's protocol.

V. The dispatch, in conclusion, refers "to important changes in the rules of public law," the desirableness of which has been demonstrated, but does not say what are the changes to which it alludes.

This is in the spirit of the proposal made by Her Majesty's government in December, 1865, (North America, No. 1, 1866, page 164:)

"I, however, asked Mr. Adams whether it would not be both useful and practical to let bygones be bygones, to forget the past, and turn the lessons of experience to account for the future. England and the United States, I said, had each become aware of the defects that existed in international law, and I thought it would greatly redound to the honor of the two principal maritime nations of the world to attempt the improvements in that code which had been proved to be necessary. It was possible, I added, that the wounds inflicted by the war were still too recent, and that the ill-will toward England was still too rife, to render such an undertaking practicable at the present moment; but it was one which ought to be borne in mind, and that was earnestly desired by Her Majesty's government, as a means of promoting peace and abating the horrors of war; and a work, therefore, which would be worthy of the civilization of our age, and which would entitle the governments which achieved it to the gratitude of mankind."

It is not necessary in this memorandum to dwell on the alleged efficiency of the American as compared to the English foreign enlistment act. The failure of the American act in the Portuguese cases, in the repeated filibustering expeditions of Walker against Central America, and the acquittal under it of Lopez, the invader of Cuba, are proofs that its action cannot always be relied upon; and this is further corroborated by the difficulties now being experienced in dealing with the Hornet at Wilmington. Although, as Mr. Fish says, there have been prosecutions under it, it is believed that from the trial of Gideon Henfield in 1793 to the present day there has never been a criminal conviction. The only result of the proceedings *in rem* has been to restore prizes, never to punish privateering; and the effect of the bonds which the act provides may be taken that the *owners* of a vessel shall not *themselves* employ her in a belligerent service, and which has, it is believed, never been practically enforced, is, as Mr. Bemis, of Boston, points out in his volume on American neutrality, to add so much to the price of the vessel.

With regard to the claims for "vast national injuries," it may be as well to observe that Professor Woolsey, the eminent American jurist, has repudiated them as untenable, while the strongest arguments in favor of the recognition of confederate belligerency are to be found in the notes to Mr. Dana's eighth edition of Wheaton; and Mr. Lawrence, (the editor of the second annotated edition of Wheaton,) in a recent speech at Bristol, stated that "as far as respects the complaint founded on the recognition of the belligerent rights of the confederates, I cannot use too strong language in pronouncing its utter baseless character. No tyro in international law is ignorant that belligerency is a simple question of fact. With the late Sir Cornewall Lewis, we may ask, if the array of a million of men on each side does not constitute belligerency, what is belligerency? But what was the proclamation of the President, followed up by the condemnation of your ships and cargoes for a violation of the blockade which is established, but the recognition of a state of war? At this moment the United States, in claiming the property of the late confederate government, place before your tribunals their title on the fact of their being the successors of a *de facto* government. I repeat that, however valid our claims may be against you on other grounds, there is not the slightest

pretext for any claim against you based on the public admission of a notorious fact, the existence of which has been recognized by every department of the Federal Government."

The course pursued by Great Britain in the contest between Hungary and Austria in 1848-'49 may be cited as being in striking contrast with the course pursued toward the United States in 1861.

After the suppression of the insurrection at Vienna (October 29, 1848) the Austrian generals determined to march against Hungary. At this time the combined Austrian armies consisted of about 135,000 men. The Hungarians, on the other hand, with about 125,000 men, occupied their entire territory, including their capital and all their fortresses. The fortress of Komorn, perhaps the strongest in Europe, appears to have been held by the Hungarians until the end of the revolution. On the 13th of December, 1848, the Austrians seemed to have gained no victories. The capture of Raab, the first of a number of successes which they obtained prior to their complete defeat in March, 1849, did not occur until December 26, 1848; meanwhile the Hungarians had been organizing for nearly a year for the purpose of making war against Austria.

[See Annual Register, vol. 90, p. 401; and vol. 91, p. 324.]

On the 11th of December, 1848, an envoy of the Hungarian executive government addressed a note to Viscount Palmerston, offering to furnish him with precise information of the actual state of the kingdom of Hungary, and asking an interview for that purpose.

On the 13th of December, 1848, the following reply was made to this request:

*Lord Edisbury to * * * **

FOREIGN OFFICE, December 13, 1848.

SIR: I am directed by Viscount Palmerston to acknowledge the receipt of your letter of the 11th instant, and in reply I am to say that Viscount Palmerston is sorry he cannot receive you. The British government has no knowledge of Hungary except as one of the component parts of the Austrian Empire; and any communication which you have to make to Her Majesty's government in regard to the commercial intercourse between Great Britain and Hungary should, therefore, be made through Baron Koller, the representative of the Emperor of Austria at this court.

I am, &c.,

EDISBURY.

(*British and Foreign State Papers*, vol. 37, page 733.)

2.—MEMORANDUM CONCERNING THE REBEL CRUISERS.

1. *Alabama*.
2. *Chickamauga*.
3. *Clarence*.
4. *Conrad*. (See Tuscaloosa.)
5. *Florida*.
6. *Georgia*.
7. *Nashville*.
8. *New York*. (See Chickamauga.)
9. *Retribution*.
10. *Shenandoah*.
11. *Sumter*.
12. *Tacony*. (See Clarence.)
13. *Tallahassee*.
14. *Tuscaloosa*.

Unless otherwise noted, the references to volume and page that follow are to be found in the published Compilation Claims of the United States against Great Britain.

THE ALABAMA.

1862, April 4. Mr. Dudley informs his government that a powerful gunboat is building in Messrs. Laird & Co.'s yard, at Birkenhead, probably for the rebels. (*Mr. Dudley to Mr. Seward, April 4, 1862—not printed.*)

May 16. He gives notice that she has been launched—undoubtedly for the rebels. (*Claims of the United States against Great Britain, vol. III, page 1.*)

June 23. Mr. Adams requests Earl Russell to prevent her from sailing. (*Claims, &c., vol. III, page 5.*)

July 5. Mr. Wilding, vice-consul at Liverpool, sends a description of the gun-boat to his government, stating that she is called the “No. 290.” (*Claims, &c., vol. III, page 3.*)

June 25. Earl Russell refers the case to the commissioners of customs. (*Claims, &c., vol. III, page 6.*)

July 1. They report the description of the vessel, and state that her builders do not deny her to be a man-of-war, but say she cannot be seized without legal evidence of the purpose for which she is built. (*Claims, &c., vol. III, page 7.*)

July 9. In accordance with Earl Russell's suggestion, Mr. Dudley furnishes Mr. Edwards, collector at Liverpool, with the evidence that the “No. 290” is intended for the rebels. (*Claims, &c., vol. III, pages 17, 18.*)

July 13. The commissioners of customs decide the evidence insufficient to justify the detention of the vessel. (*Claims, &c., vol. III, pages 19–28.*)

July 16. Mr. R. P. Collier, Queen's counsel, gives it as his opinion that Messrs. Laird & Co. are fitting out the “290” as a rebel privateer, and that her detention would be justifiable. (*Claims, &c., vol. III, pages 16–28.*)

July 23. Counsel for the United States applies to have the decision of the commissioners of customs reconsidered before the vessel escapes. (*Vol. III, pages 29–31.*)

July 29. The “290” sails without a clearance, under pretense of a trial trip, with a part of her crew and provisions for six months. Some ladies and other passengers go in her as far as Bell Buoy, as a ruse. (*Vol. III, pages 31–37, Claims, &c.*)

In accordance with the report of the law-officers orders are sent by telegraph to Queenstown and Nassau to seize her. She, however, avoids those ports. (*Claims, &c., vol. III, pages 47, 140–142.*)

The “290” anchors near Port Lynas, where the tug Hercules takes more men to her. Mr. Dudley states that she also receives cutlasses and powder, and has six guns concealed in her hold. (*Claims, &c., pages 34, 45, 46, 50, 139, 146, 147.*)

Aug. 12. She arrives at Terceira, Azores.

Aug. 17. The bark “Agrippina” arrives from London with guns, ammunition, clothing, and coal, which are all transferred to the “290” at Terceira.

1862, Aug. 20. The steamer “Bahama” also arrives from Liverpool, and proceeds with the “290” and the “Agrippina,” all three vessels flying British colors, to Angra. Here her cargo, consisting of money and guns, is put on board of the “290.” Semmes and other officers and men are also brought out in her. (*Claims, &c., pages 45, 46, 50; also, 149–50.*)

Mr. Adams addresses a note to Earl Russell, calling attention to the further prosecution of illegal and hostile measures against the United States in connection with the rebel cruiser now called the "Alabama," and transmits evidence. (*Claims, &c., vol. III, pages 44-47.*) 1862, Sept. 4.

His lordship replies that the report of the law officers of the Crown was not received in time to detain the vessel, but that on July 29 (the day when she sailed) orders were sent to Queenstown and Nassau to stop her. She, however, avoided those ports. (*Claims, &c., page 47; also, pages 134-142.*) 1862, Sept. 22.

Mr. Adams informs Earl Russell of the depredations committed by the "Alabama" at the Azores, and that other similar enterprises are on foot; (*vol. III, pages 49, 50;*) transmits deposition of George King, and urges the enforcement of the laws of neutrality. 1862, Sept. 30.

Earl Russell replies that much as he regrets such occurrences, "Her Majesty's government cannot go beyond the laws municipal and international." (*Vol. III, page 51.*) 1862, Oct. 4.

Mr. Adams transmits an intercepted letter substantiating the allegations made of the infringements of the enlistment law by the insurgents, which receives the same answer as his preceeding note. (*Vol. III, pages 51, 56.*) 1862, Oct. 9.

Earl Russell communicates report of the law officers that the Alabama did not receive her armament within the British dominions, and that no steps can be taken to prevent a repetition owing to the difficulty of ascertaining the intention of the parties making the shipments. (*Vol. III, page 53.*) 1862, Oct. 9.

Mr. Seward sends copies of papers to Mr. Adams relating to the depredations of the Alabama, and instructs him to send copies to Earl Russell. (*Vol. III, pages 54-57.*) 1862, Oct. 20.

Mr. Seward sends to Mr. Adams the resolutions of the New York Chamber of Commerce. (*Vol. III, pages 61-63.*) 1862, Oct. 21.

Informs him of further devastation by the Alabama on the high seas. (*Vol. III, page 64.*) 1862, Nov. 3.

Mr. Adams submits to Earl Russell copies of papers received from Washington, and from the consul at Liverpool, relative to the depredations of the Alabama, and asks redress. (*Vol. III, pages 70-73.*) 1862, Nov. 20.

Earl Russell informs Mr. Adams that her Majesty's government cannot admit their liability for the proceedings of the rebel cruiser, but thinks that amendments might advantageously be made to both the British and American laws. (*Vol. III, pages 88-92.*) 1862, Dec. 19.

Further correspondence on this subject produces no effect, (*vol. III, pages 93-100, 114-118, 164, 164.*) Earl Russell expresses the hopes that no further claims will be made. (*Page 164.*)

Sinking of the Hatteras. 1863, Jan. 11.

Her crew taken to Port Royal, Jamaica, where the Alabama is repaired and receives provisions and coal. The British admiral makes Semmes a visit on board of his vessel, which is treated like a regular ship of war. (*Claims, &c., vol. III, page 150; Brit. Blue Book, N. America, No. 1, 1866, page 141.*) 1863, Jan. 21.

The Alabama enters Saldanha Bay, Cape Colony, where she discharges her prisoners, is painted, &c. (*Page 166.*) 1863, July 28.

She captures the Sea Bride off Cape Town. The United States consul protests against this outrage, but receives no sat- 1863, Aug. 5.

N. B.—For a list of vessels which took our arms, supplies, &c., for the rebels, from Great Britain, see *Claims, &c., vol. 1, page 730.*

isfaction from the governor of the colony. (*Claims, &c., vol. III, pages 167-172.*)

1863, Oct. 6. Mr. Adams is instructed to inform Earl Russell that he must continue to give him notice of claims. (*Claims, &c., vol. III, pages 176-178.*)

1863, Oct. 23. He so informs Earl Russell, and transmits further evidence. (*Claims, &c., vol. III, pages 180-201.*) The Alabama continues her depredations on American commerce, for which no reparation is made by the British government, notwithstanding the continued protests of Mr. Adams. (*Vol. III, pages 201-257.*)

1863, Dec. 21. She coals at Singapore, where her commander is entertained by the officers of the garrison. (*"My Adventures," &c., Semmes, pages 714, 715.*)

1863, Dec. 25. She is allowed to land her prisoners at Malacca. (*"My Adventures," &c., page 719.*)

1864, Mar. 20. The Alabama returns to Cape Town and takes in coal and provisions. (*"My Adventures," &c., page 744.*)

1864, June 19. She is sunk by the Kearsarge. (*Claims, &c., vol. III, page 257.*) After this an extended correspondence takes place, the United States Government demanding the surrender of the prisoners carried to England by the yacht Deerhound. This demand is refused. (*Claims, &c., vol. III, pages 258-313.*)

CHICKAMAUGA.

1864, Mar. —. British-built vessel, (manuscript dispatch, Dudley, 250,) to run blockade; arrived at Bermuda early in April, (manuscript dispatch, Allen, 106.) Engaged in running blockade, with cotton, between Bermuda and Wilmington. Then known as Edith.

1864, Oct. 24. Left Wilmington in rebel service to cruise against commerce of the United States; made captures. Name changed to Chickamauga.

1864, Nov. 8. Came into Bermuda; was allowed one week to make repairs, and 25 tons of coal.

1864, Nov. 15. Left Bermuda.

1864, Nov. 20. At Wilmington, North Carolina, to unload guns and take in cargo of cotton. This vessel is also reported to have made captures under the name Olustee.

CLARENCE.

The brig Clarence was captured by the rebel steamer Florida, May 6, 1863, and manned with one twelve-pound howitzer, 20 men, and 2 officers, under command of Lieutenant Reed. She subsequently captured the bark Tacony, June 12. The guns, &c., were transferred to the Tacony, and the Clarence burnt. The Clarence was cleared at the Liverpool custom-house, November 20, 1862, by W. & H. Laird. (*Hunt's Merchants' Mag., vol. 53, 448.*)

THE FLORIDA.

The iron screw steam-gunboat Oreto, or Florida, with three masts, bark-rigged, eight port-holes for guns, carrying sixteen guns, was built at Liverpool, February, 1862.

1862, Feb. 18. Mr. Adams notified Lord Russell and inclosed evidence. (*Vol. 2, Claims, page 593.*)

Lord Russell communicated a report of commissioners of customs that the *Oreto* was a man-of-war built for the Italian government, and was taking on board coal and ballast. (*Ib.*, page 595.) 1862, Feb. 26.

Mr. Adams again addressed Lord Russell with further evidence. (*Ib.*, page 599.) 1862, Mar. 25.

Mr. Adams informed Mr. Seward that the vessel had sailed. 1862, April 3.

Lord Russell acknowledged Mr. Adams's communications and said that inquiries would be made. (*Ib.*, page 602.) 1862, Mar. 27.

Lord Russell informed Mr. Adams that the commissioners of customs at Liverpool report that the *Oreto* cleared for Palermo and Jamaica in ballast, and sailed with a crew of 52 men. (Page 605.) 1862, April 8.

Mr. Adams reported a conversation with Lord Russell, informing him of outrages committed by the *Florida*, or *Oreto*, upon American vessels, and of the conduct of the authorities of Nassau toward this vessel, which was deemed to be at variance with the proclamation of neutrality. (*Ib.*, page 608.) 1862, Aug. 1.

It appears from the consular records of the State Department that the *Oreto* was seized at Nassau on the 8th of June, by Her Majesty's gunboat *Bull-dog*, for infringement of the foreign enlistment act, and was released on the arrival of Captain Semmes at that port about that time; that she was again seized, libeled, tried in admiralty, and released on the 2d of August. It appeared in evidence that she was, when seized, in the same state of armament and equipment as when she left Liverpool; that the judge held that, had he been sitting as judge at Liverpool, he should have condemned her; but that his limited jurisdiction at Nassau prevented him from doing so. (*Appendix to Alexandra case.*) She left Nassau on the 9th of August; ran into Mobile 4th of September; sailed from there January 15, 1863.

Mr. Adams gave Lord Russell additional evidence of the character of this vessel. (*Ib.*, pages 613, 614, 615.) 1862, Oct. 9.

The *Florida* entered Nassau and the officers dined with the governor; she took on board provisions, also chain-cable, and rigging, and ten or fifteen recruits, and sailed on the 31st instant. (*Ib.*, page 617.) 1863, Jan. 30.

Took on board coal and provisions at Barbadoes, under protest from United States consul. 1863, Feb. 26.

Mr. Adams communicated to Lord Russell further evidence of the character of this vessel. (*Ib.*, page 629.) 1863, July 7.

Mr. Adams communicated to Lord Russell further information concerning this vessel. (*Ib.*, page 637.) 1863, Sept. 16.

Mr. Adams communicated to Lord Russell further evidence in regard to this vessel. (*Ib.*, page 641.) 1863, Oct. 31.

Mr. Adams communicated to Lord Russell further evidence of the abuse of the neutrality of the island of Bermuda in the treatment of this vessel, saying that she was allowed to remain nine days in port, and to make that port a base of operations against American commerce. (*Ib.*, page 651.) 1863, Aug. 19.

Lord Russell informed Mr. Adams that Her Majesty's authorities at Bermuda had exhibited commendable strictness and diligence in enforcing the regulations, and that no substantial deviation from their letter or spirit took place. (*Ib.*, page 653.) 1864, Sept. 5.

Mr. Adams communicated further evidence in regard to this vessel. (*Ib.*, page 656.) Among these affidavits is evidence of her arriving in British waters. (*Ib.*, 663.) Lord Russell objected that this proof was not under oath, (*ib.*, 660,) but it appears to have been taken before a notary. 1865, Jan. 18.

JAPAN, ALIAS VIRGINIA, ALIAS GEORGIA.

British-owned vessel; was built at Dunbarton, on the Clyde.
 1863, Mar. 20. She was equipped by a Liverpool firm—Jones & Co. Her crew was shipped by same Liverpool firm for Shanghai, and sent around to Greenock in a steamer—Heron. She was entered on the 31st of March, 1863, as for Point de Galle and Hong Kong. (*Vol. II, page 676.*)

She cleared on the 1st of April. She left her anchorage on 1863, April 1. the 2d of April, ostensibly to try her engines, but did not 1863, April 2. return. She had no armament on leaving Greenock, but a few days after her departure (*page 671*) a small steamer called the Alar, (*page 673*), freighted with guns, shot, shell, &c., and having on board a partner of the Liverpool firm who had equipped her and shipped her crew, left New Haven and met the Georgia off the coast of France, near Ushant. The cargo of the Alar was successfully transferred to the Georgia.

On the 8th of April Mr. Adams brought the case to the attention of the British government, and repeatedly thereafter, as occasion arose, reminded Her Majesty's government of the unlawful and piratical character of the vessel. (*Page 666.*)

The crew of the Georgia consisted of British subjects. On 1863, April 9. the 9th of April she left Brest on her cruise against commerce of the United States. (*Page 687.*)

The Alar put into Plymouth on the 11th of April, bringing 1863, April 11. the Liverpool merchant, who had directed the proceedings throughout, and bringing also fifteen seamen who had refused to proceed in the Georgia, on learning her character as a confederate cruiser. The rest of the crew remained.

At the time of her departure the Georgia was registered as the property of a Liverpool merchant, a partner of the firm which shipped the crew. She remained the property of this person until the 23d of June, when the register was canceled, he notifying the collector of her sale to foreign owner, Edward Bates. (*Page 677.*) From the 1st of April to the 23d of June, the Georgia being still registered in the name of a Liverpool merchant, and thus his property, was carrying on a war with the United States, with whom Great Britain was at peace. During this period she captured the Dictator and burned her; captured and ransomed the Griswold. (*Page 687.*)

The crew of the Georgia was paid through the same Liverpool firm. A copy of the advance-note used is to be found on *page 683*. After cruising in the Atlantic, burning and bonding a number of vessels, the Georgia put in at Simons' Bay, Cape of Good Hope, and calked her decks. At the end of two weeks she departed, continuing her depredations until the 28th of October, when she arrived at Cherbourg. (*Page 687.*) Many of the crew left the ship. The wages were all paid by the Liverpool firm. The same firm enlisted more men at Liverpool; sent them to Brest. (*Pages 707, 708.*) The Georgia left Cherbourg on a second cruise; was unsuccessful, and returned to Liverpool on the 1st of May, 1864. It was discovered that she had been sold, and Mr. Adams, on the 7th of June, 1864, informed British government that United States did not recognize validity of sale in neutral port; that the United States claimed right to seize vessel wherever she could be found. (*Page 710.*)

On the 30th of July she entered at the custom-house as loading for Lisbon and Africa, by Edward Bates, the pretended owner. (Page 722.) On the 11th of August she steamed out to sea, under British colors, bound for Lisbon, to fill an engagement with the Portuguese government to carry mail from Lisbon to Africa. Before she reached Lisbon she was captured by United States steamship Niagara, Captain Craven commanding, and sent to Boston as a prize. (Page 720.)

1864, July 30.

1864, Aug. 11.

On the 13th of August, Jones & Co., of Liverpool, were tried for fitting out and enlisting men for the pirate Japan, alias Virginia, alias Georgia, before Lord Chief Justice Cockburn and a special jury. The jury found them guilty, and the court fined John Jones and Robert Highat £50 each.

1864, Aug. 13.

THE NASHVILLE.

Steamer Nashville, carrying two guns, and flying confederate flag, arrived at Bermuda on October 30, 1861, having run out of Charleston on the night of October 26, 1861. (See page 538, Vol. II.)

1861, Oct. 30.

She took in a large supply of coal against the protest of the United States consul. (See pages 538, 539, Vol. II.) Although the commander of the Nashville had told the governor that she was strictly a merchant-vessel, (see page 570, Vol. II,) nevertheless the governor ordered that she should be treated as a vessel of war, and unusual courtesies were extended to her officers by the officers of the garrison. (See pages 540, 541, Vol. II.)

On the 5th of November, 1861, she sailed from Bermuda, and on the 19th of the same month fell in with the American packet-ship Harvey Birch, which she first plundered, and then burned, and on the 21st November she arrived at Southampton. (See pages 540, 550, Vol. II.)

1861, Nov. 5.

1861, Nov. 21.

On the 28th November, 1861, in reply to a note from the American minister, Mr Adams, inquiring "as to the authority possessed by this vessel to commit so aggressive an act on the citizens of a friendly power, and then to claim a refuge in the harbors of Great Britain," Earl Russell says: "I have to state that the Nashville appears to be a confederate vessel of war, her commander and officers have commissions in the so-styled confederate navy; some of them have written orders from the navy department at Richmond to report to Lieutenant Pegram" for duty "on board the Nashville, and her crew have signed articles to ship in the confederate navy." (See page 555, Vol. II.)

1861, Nov. 28.

The British authorities practically carried out their determination to consider the Nashville a regular man-of-war by detaining the United States man-of-war twenty-four hours after the former's departure from Southampton. (See page 588, Vol. II.)

After having been in port over two months, having undergone repairs, and having taken in a supply of coal, the Nashville sailed from Southampton on February 3, 1862. (See pages 563, 588, 589, 590, Vol. II.)

1862, Feb. 3.

On the 20th of February, 1862, the Nashville reached Bermuda, having met with no vessels on the way. (See page 590, Vol. II.)

1862, Feb. 20.

While at Bermuda the Nashville was allowed to coal, notwithstanding the fact that, on the day before her arrival, the governor had informed the United States consul that the British government had determined

not to allow the formation in any British colony of a coal-depot, for the use of their vessels, by either the Government of the United States or of the so-styled Confederate States. (*See pages 590, 591, Vol. II.*)

1862, Feb. 5. Mr. Allen, the United States consul at Bermuda, writes that the Nashville left February 4, having taken on board a hundred and fifty tons of coal; supposed destination, Charleston. (*See page 591, Vol. II.*)

Nashville captured and burnt off Savannah by United States blockade squadron. (*Hunt's Merch. Mag., vol. 53, p. 447.*)

THE RAPPAHANNOCK.

1857. The Rappahannock was built for the British government, and named the Victor. She was sold by the admiralty in the early part of November, 1863. Her register, dated November 6, shows that Robert Gorden Coleman, a British subject, of 28 Clement's lane, London, was sole owner. (*Vol. II, page 736.*)

1863, Nov. 10. She was delivered to the purchaser on 10th November, at Sheerness, in an incomplete state, without masts, sails, or rigging. (*Vol. IV, page 586.*)

Preparations for a voyage were at once proceeded with rapidly, under the superintendence of the dock-yard officials; the captain of the government yard having sanctioned the leave of absence to a party of riggers, they were placed on board by the master rigger, (*Vol. II, page 732.*) and continued work until two days after her arrival at Calais. (*Vol. II, pages 742, 743.*) While at Sheerness her name was changed to the Scylla; the masts of Her Majesty's ship Cumberland were used as shears to set her masts; the engine-room stores were put on board while she lay in the stream; these consisted of gauge-cocks for the boilers, blocks, and other things having the government mark upon them; they were ordered to be buried under the coal by Mr. Rumble, the chief inspector of machinery afloat at Sheerness, and Mr. Ramsey, the then captain. (*Vol. II, page 748.*)

It was given out that she was destined for a voyage to China. (*Vol. II, page 741.*) Mr. Rumble undoubtedly knew the true character of the ship; he with the captain introduced all the workmen on board, (*Vol. II, pages 748-774*); he gave directions with respect to the rigging and other equipments; he engaged men in different capacities, (*Vol. II, page 743*), and agreed with them as to wages. Similar services were rendered by the petty officers of the government yard. Mr. Bagshaw, a foreman in the boiler department, in the absence of Mr. Rumble, engaged boiler-makers to go to Calais, in which transaction Mr. Greathead, a chief engineer in the royal navy, also participated as paymaster to the families of the men. (*Vol. II, page 745.*)

She was prepared for service with the greatest secrecy and dispatch as a confederate privateer, under cover and protection which her former ownership, proximity to the yard while being fitted out, and the employment of hands from the yard, threw around her. (*Vol. II, page 724.*)

1863, Nov. 24. The equipment proceeded up to the 24th of November. On that day the parties interested in her appear to have received intelligence which changed their plans, (*Vol. II, page 734*), for in the evening of that day, about midnight, she suddenly made her departure, (*Vol. II, page 732*), in a very incomplete condition, with Mr. Reuben Harvey, the government pilot, in command, in tow of a tug-boat, (*Vol. II, page 742.*) The master rigger of Sheerness dock-yard was on board when she left, but returned in the tug. Bedding, blankets, and remaining part of her stores were put on board from the tug-boat which took

her out to sea. Soon after she left Sheerness the ship's name (Scylla) was painted from off her stern, (*Vol. II, page 734,*) and the name Rappahannock was painted on. (*Vol. II, page 595.*)

She arrived at Calais in the night of Wednesday, the 25th of November, and entered the harbor the next day, (*Vol. II, page 734,*) just previous to which she raised the confederate flag. (*Vol. II, page 742.*)

During the stay at Calais of the Rappahannock, agents were employed in London and Liverpool in procuring men to serve on her. (*Vol. II, pages, 756-785.*) Allotments were to be paid by Messrs. Jones & Co., of Liverpool. These certificates were all signed by Wm. V. A. Campbell, the commander of the Rappahannock. (*Vol. II, page 762.*) Mr. Rumble, who had arrived about the 1st of December, used his influence to procure enlistments. (*Vol. II, page 745.*)

The Rappahannock remained at Calais until July 2, 1865, when she left that port and arrived at Southampton on the 4th, bearing the name of the Beatrice. (*Vol. II, page 793.*) Here she coaled and made her way to Liverpool, where she arrived on the 7th of that month. Proceedings were here instituted against her by the United States Government. She was condemned and sold and the proceeds of the sale passed into the hands of the United States.

Although without any technical evidence upon which to rest a remonstrance, the United States minister at London considered the case of the Rappahannock so peculiar as to justify him in making a representation to Her Majesty's government, which he did on the 28th of November, 1863. (*Vol. II, page 727.*) Earl Russell replied on the 30th that the attention of the proper officers had been called to the matter, and that steps would be taken to verify the truth of the statements made. (*Vol. II, page 728.*) Further representations were made by Mr. Adams on the 5th (*Vol. II, page 729*) and 12th (*Vol. II, page 733*) of December, and again on the 16th (*Vol. II, page 735*) of that month, supported by affidavits showing the proceedings in connection with her fitting out at Sheerness, and the enlistment of men for service on her. On the 16th, (*Vol. II, 737,*) Earl Russell, in reply to the notes of the 5th and 12th, states that Her Majesty's government are fully determined to put in force the laws against any persons who have transgressed them in this matter. Further evidence was furnished by Mr. Adams on December 23, 1863, (*Vol. II, page 738,*) January 9, (*Vol. II, page 747,*) April 5 (*Vol. II, page 751*) and 16, (*Vol. II, page 754,*) and May 4 (*Vol. II, page 771*) and 23, 1864, (*Vol. II, page 776,*) To these notes Earl Russell replied that the attention of the proper departments of Her Majesty's government had been called to the matter.

RETRIBUTION, AFTERWARD ETTA—SCHOONER.

Rebel cruiser; originally a blockade-runner; received armament from schooner Dixie; captured several prizes.

Came into Nassau, and sold, in Bahamas, her prize schooner Hanover. (Manuscript dispatch, Hawley, 5.)

Was sold herself in Bahamas. Name changed to Etta; Etta seized in New York by United States authorities. Messrs. Renouard & Co. have claim as owners against United States for damages. (*British Blue Book, North America, 10, 1864.*)

THE SHENANDOAH.

On October 8, 1864, the steamer Laurel, of about 300 tons, cleared from Liverpool, having on board a portion of the late Alabama's crew, one hundred men, and six guns, munitions, and stores. (Page 318.)

The steamer Sea King, built at Glasgow, of about 1,070 tons and 250 horse-power, cleared for Bombay, October 8, 1864, with a cargo of coal only. (Vol. III, pages 319, 320.)

Both vessels proceeded to an island near Madeira, where the cargo of guns and munitions was transferred to the Sea King from the Laurel, the former now assuming the name of Shenandoah. (Pages 320, 321.)

Mr. Adams submits affidavits concerning the Sea King to Lord Russell. (Page 323.)

Earl Russell transmits to Lord Lyons the dispatch of the British consul at Teneriffe, showing how the Sea King was transferred to the confederates. (Page 331.)

Lord Russell acknowledges receipt of Mr. Adams's note of November 18, with the depositions. (Page 335.)

Lord Russell informs Mr. Adams that the sale of the Sea King is stated to have been regular. (Page 337.)

United States consul at Melbourne informs Mr. Seward of the arrival of the Shenandoah there. She is recognized as a beligerent, allowed to go into dock for repairs, to coal, and ship a crew. Authorities render assistance. (Pages 384-444.)

Mr. Adams calls Lord Russell's attention to further proceedings of the Laurel at Nassau. Remonstrates against her clearance with confederate mails, and demands her detention. (Page 339.)

Lord Russell replies that efforts were made to prevent violation of law at Nassau, and will inquire as to her carrying confederate mail. (Page 341.)

Lord Russell informs Mr. Adams that the proceedings of the Laurel may have rendered her liable to capture on the high seas, but that carrying the mail was not unlawful. (Page 344.)

Mr. Adams lays before Lord Russell evidence of the Shenandoah's depredations in the Brazilian waters. (Pages 345-349.)

Lord Russell replies that Her Majesty's government have done all that could be done legally to stop the evil complained of. (Pages 350-357.)

Mr. Seward incloses to Mr. Adams the Melbourne dispatch and papers and a claim for indemnification, which Mr. Adams submits to Lord Russell on October 21, reviewing the Shenandoah's history. (Pages 369-376 et seq. to page 444.)

Lord Russell acknowledges receipt of these papers. (Page 444.)

Shenandoah arrives at Liverpool, and is surrendered and received by British authorities. (Pages 444, 445.)

Mr. Adams will receive the vessel, but calls for punishment of her crew. (Page 447.)

Earl Clarendon replies that attention will be given to Mr. Adams's note. (Page 448.)

Mr. Dudley gives the history of the Shenandoah's transfer to his custody. (Pages 454, 455.)

Earl Clarendon informs Mr. Adams that the government will not detain the Shenandoah's crew, and it is reported that none of them are British subjects. (Pages 460, 461.)

Mr. Adams expresses his dissatisfaction to Lord Clarendon over the release of the crew. (*Pages 462, 463.*) 1865, Nov. 14.

Lord Clarendon represents, in reply, that no evidence is contained in the papers heretofore submitted warranting a prosecution. (*Pages 463, 464.*) 1865, Nov. 17.

Reply of Lord Clarendon to Mr. Adams's note of October 21, affirming that the action of his government in relation to the Shenandoah is according to law, and no other course was open to it than that followed. (*Pages 464, 468.*) 1865, Nov. 18.

Mr. Seward directs Mr. Adams to inform Lord Clarendon of the Government's views as to the depredations of the Shenandoah and release of her crew. (*Pages 469, 470.*) 1865, Nov. 30.

Mr. Adams transmits to Lord Clarendon full testimony concerning the cruise of the Shenandoah, her armament and crew. (*Pages 475-491.*) 1865, Dec. 28.

The above acknowledged by Lord Clarendon. (*Page 491.*) 1865, Dec. 30.

Lord Clarendon states that Mr. Adams's letter of December 28 contains the first evidence submitted bearing on the piracy of Waddell, and breach of the foreign-enlistment act, but it was not sufficient for conviction. (*Pages 491-493.*) 1866, Jan. 19.

Lord Clarendon to Sir F. Bruce replies to Mr. Seward's dispatch of November 30, affirming the strictly legal conduct of his government in discharging the Shenandoah's crew, and refusal to prosecute for piracy. Inquiries will be made concerning the action of the Melbourne authorities. (*Pages 494-498.*) 1866, Jan. 19.

Mr. Seward informs Sir F. Bruce, in reply to Lord Clarendon's dispatch of January 19, that the convictions of his government had not been changed thereby. (*Page 498.*) 1866, Feb. 9.

Lord Clarendon reviews the testimony submitted by Mr. Adams on December 28, with a letter from the governor of Victoria, as to the charges concerning the action of the authorities there, and the enlistment of seamen on the Shenandoah. (*Pages 499-507.*) 1866, June 6.

THE SUMTER.

The Sumter was an American-built vessel, trading between New Orleans and Havana.

Having been armed and equipped as a vessel of war, she ran the blockade at New Orleans. 1861, June 30.

Mr. Adams informed Lord Russell that she had been supplied with coal and other necessities at Trinidad, which is complained of as a breach of the proclamation of neutrality. (*Vol. II Claims, page 484, 5.*) 1861, Sept. 30.

Lord Russell denied that there had been, in what was done, a violation of neutrality. (*Ib., page 486.*) 1861, Oct. 4.

She arrived at Gibraltar, where she received a new anchor and cable. Owing to the representations of the American consul, she was not able to supply herself with coal. 1862, Jan. 18.

She was sold at auction. (*Ib., 510.*) 1862, Dec. 12.

She proceeded to Liverpool. (*Ib., 519, 520.*) 1863, Feb. 17.

Mr. Adams invited Lord Russell's attention, claiming that the sale was invalid, and that her remaining in port was in violation of the Queen's proclamation. Lord Russell denied this, and a correspondence ensued. (*Ib., page 520 et seq.*) 1863, Feb. 16.

She sailed from Liverpool with a cargo of guns and supplies, and was afterward wrecked at Charleston. 1863, July 3.

THE TALLAHASSEE.

This vessel was originally a blockade-runner, British-built, called the Atlanta.

In 1864, as appears by a letter from Mr. Seward to Mr. Adams, she ran out of Wilmington armed, and commenced cruising and pillaging off New York.

She was reconverted into a merchantman, christened the Chameleon, and took a cargo to Liverpool, where at the close of the war she was claimed by the United States and sold, and the proceeds paid to the credit of the United States.

For the correspondence in regard to her see *Vol. III Claims, page 314 et seq.*

TACONY.

The Tacony, formerly the Clarence, Lieutenant Reed, made several captures, and was destroyed by her crew June 22, 1863, who left in the schooner Archer, and were subsequently captured by an expedition from Portland. (*Hunt's Merchant's Mag., vol. 53, 448.*)

THE TUSCALOOSA.

The Tuscaloosa, originally called the Conrad, was captured off the coast of Brazil by the Alabama. Guns were placed upon her, and she was put in charge of a lieutenant and ten men, and employed as tender of the Alabama.

She entered Simon's Bay, remaining there seven days; her cargo was sold to a British merchant in Cape Town. She was detained by British authorities, and subsequently released, with warning to the captain of the Alabama that ships of war of the belligerents were not allowed to bring prizes into British ports.

She made two captures in her character of rebel cruiser. (*Claims, &c., vol. —.*)

3. AMOUNT OF CLAIMS.

1. *Claims belonging to the United States.*

The United States should be re-imbursed for all the actual outlay expended in the pursuit and capture of the rebel cruisers.

They may also fairly claim, as representing the community, to be re-imbursed for the outlay caused by the increased premium and enhanced freights resulting from the special risk growing out of the operations of the rebel cruisers fitted out in English ports.

2. *Claims of individuals.*

The following is believed to be a proximately complete statement of the amount of claims thus far presented to the Department of State for injuries committed by the rebel cruisers:

By the Alabama	\$5, 245, 103 06
By the Boston	400 00
By the Chickamauga	114, 146 85
By the Clarence	14, 520 00
By the Florida	3, 029, 448 98
By the Georgia	326, 351 50
By the Nashville	70, 583 95

By the Olustee	\$72, 869 00
By the Retribution	20, 982 26
By the Sallie	5, 540 00
By the Shenandoah	4, 479, 100 36
By the Sumter	2, 250 00
By the Tacony	8, 400 00
By the Tallahassee	272, 864 38
Total	<u>13, 662, 560 34</u>

4. THE DUTY OF GREAT BRITAIN TO REMAIN NEUTRAL, AND TO ENFORCE THE NEUTRALITY OF BRITISH SUBJECTS DURING THE CONTEST.

It will not be denied that whatever obligation there may be to maintain a neutral position in a war between two recognized sovereign powers, exists certainly to an equal extent in civil war in which both parties are recognized as belligerents, and with still greater force in a contest between a friendly government and an insurgent portion of its population, whose resistance to its authority has not assumed the proportions and attained the probability of success to entitle it to be recognized by other nations as a belligerent.

In 1867 the British government appointed a commission to inquire into and consider the character, working, and effect of the British laws available for the enforcement of neutrality during the existence of hostilities between other states with whom Great Britain was at peace. In 1868 this commission made a report, containing, among other things in the appendix, a memorandum by Mr. Abbott (now Lord Tenterden) of the various foreign enlistment acts of Great Britain and other countries, including the United States. This memorandum is to be found in the fourth volume of Claims against Great Britain, page 93 *et seq.*

It resulted from this report that the comprehensive enlistment act, which may be found in the "Foreign Relations for 1870," page 158, was passed.

It is not supposed that the liability of Great Britain to indemnify individual losses occasioned by the several cruisers will be seriously disputed, if it be first established that the cruisers were constructed, equipped, armed, or re-inforced in her ports, in violation of her international obligations to the United States. But to make that point sure, the following correspondence (not contained in Mr. Abbott's memorandum) between Mr. Jefferson, then Secretary of State, and Mr. Hammond, British minister at Washington, is introduced. This correspondence grew out of the illegal acts committed by French cruisers, alluded to in Mr. Abbott's memorandum. It is to be observed that this correspondence took place before any statute or municipal law had been enacted by the United States, and the duty of the United States in that respect is placed upon its international obligations to Great Britain; and also that the action of the United States was taken without any information furnished by any agent or representative of the British government.

Mr. Jefferson to Mr. Hammond.

GERMANTOWN, November 14, 1793.

SIR: I have to acknowledge the receipt of your letter of the 7th instant on the subject of the British ship *Roehampton*, taken and sent into Baltimore by the French privateer the *Industry*, an armed schooner of San Domingo, which is suggested to have augmented her force at Baltimore before the capture. On this circumstance, demand is grounded that the prize she has made shall be restored.

Before I proceed to the matters of fact in this case, I will take the liberty of calling your attention to the rules which are to govern it. These are—

1st. That restitution of prizes has been made by the Executive of the United States only in the two cases of capture within their jurisdiction, by armed vessels originally constituted such without the limits of the United States; or, 2d, of capture either within or without their jurisdiction, by armed vessels, originally constituted such within the limits of the United States, which last have been called proscribed vessels. 2d. That all military equipments within the ports of the United States are forbidden to the vessels of the belligerent powers, even where they have been constituted vessels of war before their arrival in our ports; and where such equipments have been made before detection, they are ordered to be suppressed when detected, and the vessel reduced to her original condition. But, if they escape detection altogether, depart and make prizes, the Executive has not undertaken to restore the prizes.

With due care it can scarcely happen that military equipments of any magnitude shall escape discovery; those which are small may sometimes, perhaps, escape, but to pursue these so far as to decide that the smallest circumstances of military equipment to a vessel in our ports shall invalidate her prizes through all time, would be a measure of incalculable consequences. And since our interference must be governed by some general rule, and between great and small equipments no practicable line of distinction can be drawn, it will be attended with less evil on the whole to rely on the efficiency of the means of prevention, that they will reach with certainty equipments of any magnitude, and the great mass of those of smaller importance also; and if some should in the event escape all our vigilance, to consider these as of the number of cases which will at times baffle the restraints of the wisest and best-guarded rules which human foresight can devise. And I think we may safely rely that since the regulations which got into a course of execution about the middle of August last, it is scarcely possible that equipments of any importance should escape discovery.

These principles showing that no demand of restitution lies on the ground of a mere military alteration, or an augmentation of force, I will consider your letter only as a complaint that the orders of the President prohibiting these have not had their effect in the case of the *Industry*, and inquire whether, if this be so, it has happened either from neglect or connivance in those charged with the execution of these orders. For this we must resort to facts, which shall be taken from the evidence furnished by yourself and the British vice-consul at Baltimore, and from that which shall accompany this letter.

About the beginning of August the *Industry* is said to have arrived at Baltimore with the French fleet from San Domingo. The particular state of her armament on her arrival is lately questioned, but it is not questioned that she was an armed vessel of some degree. The Executive having received an intimation that two vessels were equipping themselves at Baltimore for a cruise, a letter was, on the 6th of August, addressed by the Secretary of War to the governor of Maryland, desiring an inquiry into the fact. In his absence, the executive council of Maryland charged one of their own body, the Hon. Mr. Kilty, with the inquiry. He proceeded to Baltimore, and, after two days' examination, found no vessel answering the description of those which were the object of his inquiry. He then engaged the British vice-consul in the search, who was not able, any more than himself, to discover any such vessels. Captain Kilty, however, observing a schooner, which appeared to have been making some equipments for a cruise, to have added to her guns, and made some alteration to her waist, thought these circumstances merited examination, though the rules of August had not yet appeared. Finding that his inquiries excited suspicion, and fearing the vessel might be withdrawn, he had her seized, and proceeded in the investigation. He found that she was the schooner *Industry*, Captain Carvin, from San Domingo; that she had been an armed vessel for three years before her coming here, and as late as April last had mounted sixteen guns; that she now mounted only twelve, and he could not learn that she had procured any of these or done anything else, essential to her as a privateer, at Baltimore. He therefore discharged her, and on the 23d of August the executive council made the report to the Secretary of War, of which I inclose you a copy.

About a fortnight after this (September 6) you added to a letter on other business a short paragraph, saying that you had lately received information that a vessel named the *Industry* had, within the last five or six weeks, been armed, manned, and equipped in the port of Baltimore. The proceedings before mentioned, having been in another Department, were not then known to me. I therefore could only communicate this paragraph to the proper Department. The separation of the Executive within a week after prevented any explanations on the subject, and without them it was not in my power either to controvert or admit the information you had received. Under these circumstances I think you must be sensible, sir, that your conclusions from my silence, that I regarded the fact as proved, was not a very necessary one.

New inquiries at that time could not have prevented the departure of the privateer or the capture of the *Roehampton*, for the privateer had then been out for some time, the *Roehampton* was already taken, and was arriving at Baltimore; which she did

about the day of the date of your letter. After her arrival new witnesses have come forward to prove that the Industry had made some military equipments at Baltimore before her cruise. The affidavits taken by the British vice-consul are dated about nine or ten days after the date of your letter and arrival of the Roehampton; and we have only to lament that those witnesses had not given their information to the vice-consul when Mr. Kilty engaged his aid in the inquiries he was making, and when it would have had the effect of our detaining the privateer till she should have reduced herself to the condition in which she was when she arrived in our ports, if she had really added anything to her then force. But supposing the testimony just and full, (though taken *ex parte*, and not under the legal sanction of an oath,) yet the governor's refusal to restore the prize was perfectly proper, for, as has been before observed, restitution has never been made by the Executive, nor can be made, on a mere clandestine alteration or augmentation of military equipment, which was all that the new testimony tended to prove.

Notwithstanding, however, that the President thought the information obtained on the former occasion had cleared this privateer from any well-grounded cause of arrest, yet that which you have now offered opens a possibility that the former was defective. He has, therefore, desired new inquiry to be made before a magistrate legally authorized to administer an oath and indifferent to both parties; and should the result be that the vessel did really make any military equipments in our ports, instructions will be given to reduce her to her original condition whenever she shall again come into our ports.

On the whole, sir, I hope you will perceive that, on the first intimation, through their own channels, and without waiting for information on your part, that a vessel was making military equipments at Baltimore, the Executive took the best measures for inquiring into the fact, in order to prevent or suppress such equipments; that an officer of high respectability was charged with the inquiry; that he made it with great diligence himself, and engaged similar inquiries on the part of your vice-consul; that neither of them could find that this privateer had made such equipments, or, of course, that there was any ground for reducing or detaining her; that at the date of your letter of September 6 (the first intimation received from you) the privateer was departed, had taken her prize, and that prize was arriving in port; that the new evidence, taken ten days after that arrival, can produce no other effect than the institution of a new inquiry, and a reduction of the force of the privateer, should she appear to have made any military alterations or augmentation, on her return into our ports; and that in no part of this procedure is there the smallest ground for imputing either negligence or connivance to any of the officers who have acted in it.

I have the honor to be, sir, with much respect, yours, &c.,

TH. JEFFERSON.

Mr. Brice to Mr. Knox, Secretary of War.

ANNAPOLIS, MD.,
In Council, August 23, 1793.

SIR: Your communications of the 6th instant arrived in the absence of Governor Lee, who is gone to the Virginia Springs. They were, of course, taken into consideration by the council, whose assistance the governor, for reasons stated to you in his letter of the 6th June last, has constantly required in matters of this kind. We immediately adopted the expedient of deputing a member to Baltimore, furnished with all the authority we could confer, to carry the views of the President into effect. Captain Kilty, who accepted this mission, has returned, and reports as follows:

That on his arrival in Baltimore he began and for two days pursued a diligent inquiry respecting the two vessels said to be fitting out as privateers, without receiving any satisfactory account. That he then determined to interest the British vice-consul (Mr. Edward Thornton*) in the search; accordingly he opened his business to that gentleman, who he believes used every endeavor to discover the privateers in question, but without effect. That he (Captain Kilty) then took an actual observation, in the public barge, of all the vessels in the harbor, and remained at length convinced that either those described by the Secretary of War were not there, or that they were not in such a state of preparation for cruising as to make it possible to discover their intention. That he had, however, observed at a wharf on Fell's Point a schooner mounting twelve guns. Although this vessel, as well from her size as her having come in with the fleet from San Domingo, could not be the Virginia pilot-boat mentioned in the Secretary of War's letter, yet as she seemed to have been making some equipments, and was evidently intended for a cruise, Captain Kilty thought it proper to make some

* Mr. Thornton was the father of the present distinguished representative of H. B. M. at Washington.

inquiries respecting her. He did so, as far as was consistent with his resolution not to alarm those concerned in her, until he should have put himself in a condition to seize her, if he should find it necessary. The cautious manner in which this consideration obliged him to proceed rendered his intelligence very incomplete. On the whole, however, it appeared that she had added to her number of guns and made some alteration to her waist since her arrival with the fleet, but where the additional cannon were procured he could not learn. Although the regulations on this subject had not then appeared, it occurred to him that military equipments (although partial ones) were not permitted in our ports, and while he was considering whether the circumstances he had discovered would justify him in detaining the vessel, and had returned to Fell's Point to make a final observation and inquiry, he learned that an intimation of his design was on its way to her commander. Apprehending, therefore, that she would draw off into the stream, and make a visit to her difficult, if not impracticable, he resolved to get possession while it was in his power, and accordingly desired Mr. Graybill, the deputy marshal, to meet him at an appointed hour with a few gentlemen who could be confided in. This being done Captain Kilty went on board and inquired for the captain and other officers, but none of them were there. He then gave the vessel in charge to Mr. Graybill, desiring him to do whatever was necessary to disable her from moving off. He then inquired without reserve respecting the equipments she had made in Baltimore, but could not learn that she had procured guns or done anything that was essential to her as a privateer. That having left the vessel, he was about to return to the town for the purpose of finding the captain, who was said to be there, but was surprised with the appearance of a considerable body of Frenchmen, with a leader and a drum at their head, marching hastily toward the schooner; that being persuaded they intended to retake her, he opposed their progress, and some circumstances of tumult ensued, which at length subsided by these people protesting their ignorance of her having been taken by authority.

That the next morning Captain Kilty received a visit from the captain, Jean Baptiste Carvin, who is likewise owner of the schooner, and who with great temper asked the reasons of his vessel having been seized. That, on being informed that the principal ground of the measure was his having enlarged his number of guns, he produced papers signed by the proper officers at San Domingo, by which it appeared that his vessel, called the "Industry," has carried guns these three years past, and that on the 11th of April last she mounted sixteen, and had a crew sufficient for privateering. He produced likewise a commission or license for cruising, by which, as he explained it, the prizes went to the government, and the captors received a reasonable gratification. After exhibiting these papers, he asserted that he had procured no guns, or anything of a military nature, except a few spare rammers in Baltimore, but that the guns he appeared to have mounted since his arrival were brought in his hold. He acknowledged the purchase of some cordage and the cleaning the bottom of the vessel, with other things of an indifferent nature, and concluded with demanding if the armed vessels in general in the harbor were not equally liable to detention with his.

That, without thinking himself obliged to give entire credit to all these declarations, Captain Kilty still found it impossible to disprove any of them, and, therefore, being satisfied that no representation he should be able to make would induce or authorize the Federal Executive to continue the restriction he had laid on the vessel, but that, on the contrary, heavy damages would be incurred by the public for her detention, he resolved, after he should previously inquire of the French vice-consul respecting the authenticity of the documents exhibited by the captain, to release the vessel. Accordingly, he waited on that officer, who, with great readiness, said much more than was required, and, this ceremony being finished, Captain Kilty directed Mr. Graybill to release the vessel.

We have the honor to be, sir, &c.,

JAMES BRICE,
President.

Mr. Hammond to Mr. Jefferson.

LANSDOWN, November 22, 1793.

SIR: I have had the honor of receiving your letter of the 14th instant, upon which, as it announces the *fixed* determination of this Government not to restore the British ship *Roehampton*, it is unnecessary for me to offer many observations, or to enter into a minute examination of the reasoning or the facts by which that determination is justified.

I cannot, however, avoid remarking, that although your position may be well founded, "that it would be a measure of incalculable consequences to decide, that the *smallest* circumstances of military equipment to a vessel in" your "ports should invalidate her

prizes through all times;" it may also be a measure of incalculable mischief to the general commerce of friendly powers (excepting that of France) trading with the United States, if the *largest* circumstance of military equipment, superadded to French privateers, in your ports, provided they elude the vigilance of the officers appointed to watch over proceedings of this nature, shall not be considered by this Government as sufficient to invalidate prizes brought into its ports by vessels under this predicament. In the present case the facts are that the schooner *Industry*, according to the deposition of Benjamin Baker, of Baltimore, (at whose wharf and ship-yard she lay during her additional equipment,) had no more than *four or six* cannon mounted when she was brought to his wharf; that, when she left it, "she had *four six-pounders, eight four-pounders, and two howitzers completely mounted*;" and that, from Mr. Kilty's report, it appears that he himself was convinced that she had added to the number of her guns, and had made alterations of a warlike nature; but as he could not learn whence these additional cannon had been procured, he did not deem himself justifiable in refusing his assent to the authenticity of the documents produced by the captain of the vessel, or in detaining her any longer.

The privateer *Industry* was therefore allowed to depart from Baltimore under an augmentation of force more than double to that of her *original appearance* in that port; and to which augmentation I have reason to believe that her subsequent capture of the ship *Roehanpton* is, in a great measure, if not entirely, to be imputed.

I have the honor to be, with sentiments of greatest respect, &c.

The seventh article of the treaty of November 19, 1794, after reciting that certain merchants and others of His Britannic Majesty's subjects had sustained loss and damage by the capture of their vessels and merchandise, taken by vessels originally armed in ports of the United States, agreed that in all such cases where restitution should not have been made, the complaints of the parties should be referred to commissioners, and the United States should undertake to pay to the claimants, in specie, without deduction, the amount of such sums as should be awarded to them respectively by the commissioners. (8 *Stat. at Large*, p. 121.)

The history of the various steps subsequently taken by the Government of the United States, in its different branches, to maintain its sovereignty and to prevent violations of that sovereignty by agents or representatives of other powers at war with each other, are detailed at length and with fairness by Mr. Abbott, in the memorandum already referred to.

It is claimed as a fair result of a review of that history: *First*. That Great Britain, which is a great naval power, with a strong government, possessed of all the machinery requisite to enable it to perform its duties, was bound to prevent, at its own risk, the arming, equipping, or construction of any vessels whereby war could be carried on against the United States, upon the ocean, during the hostilities between the United States and the insurgents. *Second*. That in any particular case, failing of its duties in that respect, Great Britain was bound to arrest and detain any vessel escaping from its ports, whenever it should appear within its jurisdiction. *Third*. That Great Britain was further bound to instruct its naval forces in all parts of the globe to arrest and detain vessels so escaping, whenever they should be met.

In support of this proposition the following cases and authorities are cited:

1. Reference is made to the correspondence during General Washington's administration, above quoted, and to the treaty of 1794, already cited.

2. To the speech of Mr. Canning, in 1823, in Parliament, quoted in *Phillimore's International Law*, vol. 3, p. 217, as follows:

If I wished (Mr. Canning said) for a guide in a system of neutrality, I should take that laid down by America in the days of the presidency of Washington and the secretaryship of Jefferson. In 1793 complaints were made to the American Government that French ships were allowed to fit out and arm in American ports, for the purpose

of attacking British vessels, in direct opposition to the laws of neutrality. Immediately upon this representation the American Government held that such a fitting out was contrary to the laws of neutrality, and orders were issued prohibiting the arming of any French vessels in American ports. At New York a French vessel fitting out was seized, delivered over to the tribunals, and condemned. Upon that occasion the American Government held that such fitting out of French ships in American ports, for the purpose of cruising against English vessels, was incompatible with the sovereignty of the United States, and tended to interrupt the peace and good understanding which subsisted between that country and Great Britain.

Here, sir, [he added,] I contend is the principle upon which we ought to act.

3. During the civil war raging in Portugal, in 1827, 1828, 1829, four vessels left Plymouth ostensibly for Brazil, with six hundred and fifty-two officers and men. The British government of that day, believing that it was destined for Portugal, dispatched a fleet to Terceira, (which, it may be observed, was the place to which the *Alabama* first went after her departure from England,) with orders, if the expedition appeared, to give them warning against hovering about or making any effort to effect a landing; and, in case of their persistence against the warning, to drive them away from that neighborhood, and to keep sight of them until convinced that they had no intention of returning to the Western Islands or proceeding to Maderia. It became necessary in carrying out these orders to fire upon the expedition. One man was killed, some were wounded, and the expedition was broken up. This act gave rise to an extended debate in Parliament, and the conduct of the government was approved. (*Hansard, vols. 23 and 24 N. S. Annual Register History, &c., A. D. 1829, vol. 72, p. 187, et seq.*)

4. Mr. Phillimore says: "The courts of the North American United States have decided that foreign ships which have offended against the laws of the United States, within their jurisdiction, may be pursued and seized upon the ocean, and rightfully brought into the ports of the United States for adjudication." (*Vol. III, p. 228, Rose vs. Hinsley, 4 Cranch, 287; Hudson vs. Guestier, Cr. 6, 284.*)

Much more evident is this right of capture at sea, when the offense is one against not merely municipal but international law.

5. Sir Robert Collier, on the 23d of July, 1862, on certain affidavits submitted to him, gave his opinion in regard to the *Alabama*, that it was difficult to make out a stronger case of infringement of the foreign-enlistment act, which, if not enforced on that occasion, was little better than a dead letter; and that it well deserved consideration whether, if the vessel were allowed to escape, the Federal Government would not have a serious ground of remonstrance. (*3 Claims, p. 29.*)

This opinion was communicated officially to Earl Russell by Mr. Adams, July 24, 1862, (*3 Claims, p. 26.*) and Sir Robert Collier was, on the 2d day of October, 1863, appointed solicitor-general in the same administration, in the place of Sir Roundel Palmer, made attorney-general.

6. On the 1st of August, 1870, the new foreign-enlistment bill was discussed in the House of Commons. In the course of debate the attorney-general said that "the honor and dignity of the Crown are compromised when the subjects of the Queen take part in hostilities against an ally."

Mr. Vernon Harcourt said that "no one would differ from Lord Russell's dictum, that the case of the *Alabama* was a scandal to the laws of that country, and that those concerned in that disastrous fraud committed one of the most unpatriotic acts of which an Englishman had ever been guilty." And Sir Roundel Palmer said that "*it was the duty of the state to repress any attempt on the part of the private citizen to oppose the public will to be neutral.*" (*See Foreign Relations, 1870, p. 153, et seq.*)

On the 3d of August Mr. Vernon Harcourt said, in a subsequent de-

bate on the same bill, that “the policy of Washington in 1793 was the foundation of the whole of the modern practice on the subject of neutrality.” (*Hansard, 3d series, vol. 203, p. 1507.*)

7. The case of the “International” and her cargo, adjudicated in the court of admiralty, January 17, 1871, before Sir Robert Phillimore, arose under the new foreign-enlistment act. In rendering the decision the distinguished jurist said :

This statute, passed during the last session, under which the authority of this court is now for the first time evoked, is, in my judgment, very important and very valuable ; strengthening the hands of Her Majesty’s government, and *enabling them to fulfill more easily than heretofore that particular class of international obligations which may arise out of the conduct of Her Majesty’s subjects toward belligerent foreign states, with whom Her Majesty is at peace.*

The London Times of January 18, 1871, commenting upon the decision, says :

* * * * *

The war between France and Germany broke out toward the end of the last session, and it was then remembered at the foreign office that our *foreign-enlistment act was imperfect*, and that a royal commission had recommended its amendment in several particulars. A bill was accordingly introduced in hot haste and hurried through Parliament.

And the Saturday Review of the 21st of January, 1871, says :

* * * * *

The Americans have been, through the whole course of the Alabama controversy, fully justified in maintaining that defective legislation would in no case exempt a neutral state from the obligations imposed by international law. They were mistaken in supposing that the English government relied on the unsound argument of inability to discharge its duties, although Lord Russell on several occasions showed that the English law was more stringent than that of the United States. *If he had contended that Parliament had not armed the Crown with sufficient powers, Mr. Adams or his successors might have conclusively shown that foreign states had nothing to do with the international legislation of England.*

* * * * *

8. Even Lord Russell is disposed to admit that there was a negligence in the case of the Alabama that entailed a liability for her act :

What I should esteem a reasonable answer is one suggested by Mr. Forster, the vice-president of the committee of council on education. I understand him to say that neither the secretary of state for foreign affairs nor the law-officers were in fault, but the official persons employed at Liverpool were wanting in due diligence, and that this country might, in reparation of that neglect, grant compensation for the losses incurred by merchants in consequence of captures made by the Alabama. It appeared to me that, if the officers of the customs were misled or blinded by the general partiality to the cause of the South known to prevail at Liverpool, and that a *prima facie* case of negligence could be made out, Great Britain might fairly grant a sum equivalent to the amount of losses sustained by the captures of the Alabama. (*Speeches and Dispatches of Earl Russell, vol. 2, pp. 259, 260.*)

VII.—CLAIMS OF BRITISH SUBJECTS AGAINST THE UNITED STATES FOR LOSSES AND INJURIES “ARISING OUT OF ACTS COMMITTED DURING THE RECENT CIVIL WAR IN THE UNITED STATES.”

These must be examined upon principles applicable to public war. The British government has recognized the conflict as waged by one actual government against another. The Supreme Court of the United States, in *Mauran vs. Insurance Company*, says :

The Constitution of the United States, which is the fundamental law of each and all of them, not only afforded no countenance or authority for these proceedings, [those of the rebels,] but they were, in every part of them, in express disregard and violation of it. Still it cannot be denied that by the use of these unlawful and unconstitutional means a government, in fact, was erected greater in territory than many of the old governments in Europe, complete in the organization of all its parts, containing within its limits more than eleven millions of people, and of sufficient resources in men and money to carry on a civil war of unexampled dimensions; and during all which time the exercise of many belligerent rights were either conceded to it or were acquiesced in by the supreme government: such as the treatment of captives, both on land and sea, as prisoners of war; the exchange of prisoners; their vessels captured recognized as prizes of war and dealt with accordingly; their property seized on land referred to the judicial tribunals for adjudication; their ports blockaded, and the blockade maintained by a suitable force and duly notified to neutral powers, the same as in open and public war. (6 *Wallace*, page 14.)

1.—INJURIES INFLICTED BY REBEL AUTHORITIES OR BY PRIVATE REBELS.

Lord Stanley, afterward Earl Derby and prime minister of England, in a debate on the affairs of Greece, June 17, 1850, said :

I do not understand that where, by no fault of a government, offenses are committed against foreigners, the government is bound to indemnify those foreigners. The government is bound to afford its protection to foreigners and to its own subjects alike, but British subjects before now have been pillaged in the Roman states and the Neapolitan states, and I never heard of any demand against the government of either of those states. (*Hansard*, 3d series, volume 111, page 1306.)

In further support of the general proposition that no government is responsible for injuries done to the inhabitants of the country, whether citizens or foreigners, by rebels or by alien enemies exercising in the particular locality or for the time being superior force against such governments, see Rutherford's *Institutes*, p. 509; Vattel, book 2, ch. 6, sec. 73; Phillimore's *International Law*, vol. 1, sec. 218; — Calvo *Derecho Internacional*, tom. 1, p. 387.

When there was a revolt at Leghorn, the town was taken by storm by an Austrian corps, acting as auxiliaries of the Grand Duke of Tuscany. After the town had been taken, and when resistance was over, some of these Austrian troops plundered the houses of certain British subjects. Among others, the house of a Mr. Hall was forcibly entered by a detachment, headed by an officer, which remained in the house for several hours, brought into the house the wives of the soldiers, broke open and plundered everything from the cellar to the garret, destroyed what they did not take away, carried away many of the things in the house, selling them to people at the gate, which was not far off, and returning afterward to take away other cargoes. This was done at the houses of Mr. Hall, of a widow lady, and of other persons; each of those houses having, as a matter of precaution, been marked visibly on the outside door as the residences of British subjects, under the protection of the British consul. It was for these losses that, upon legal advice, compensation had been demanded. (*Hansard*, 3d series, vol. 113, p. 635.)

With reference to this affair a correspondence ensued, which is cited in detail in a note to Guillaumin's edition of Vattel, 1863, vol. 2, p. 49. It is believed that this correspondence has never appeared in England. The copy herewith submitted was translated from a Spanish-American publication. (*Torres Caicedo Union—Latino, Americana*, pp. 343, 348.)

[Austrian dispatch.]

The Prince of Schwartzemberg to Baron Hotter, London, on the demand for indemnification which the government of England makes of the governments of Tuscany and Naples.

VIENNA, April 14, 1850.

We have been informed with reference to the demand for indemnification which England makes against Tuscany for the alleged damages which English subjects had suffered in Leghorn, in consequence of the suppression of the revolt which took place in that city in May of 1849. Such a claim, from all points of view, is worthy the attention of the imperial government. In fact, the injuries which gave room for this claim are attributed to the troops of His Majesty the Emperor, which acted as the allies of the legitimate sovereign of Tuscany. On the other hand, independently of this circumstance, it was natural that Austria, united to Tuscany by so many close ties, and by ancient and modern treaties, should lend, and lends, a particular interest to whatever refers to that country. Finally, and it is the point of most importance, the English pretensions tend to raise a question of principle, the solution of which is of the highest importance for the independence and security of all the states which maintain friendly relations with Germany.

The origin of the claim goes back to the period in which the city of Leghorn was in full insurrection against the legitimate government. The Austrian troops called to re-establish the authority of the laws were received at the cannon's mouth; and firing upon them continued from the windows until the city was captured.

Our soldiers found themselves obliged to enter by force into warehouses and dwellings in order to ascertain if armed men and munitions of war were not therein concealed. If, on such an occasion, and in spite of the efforts of our officers to prevent disorder, there was such disorder; and if some articles belonging to Englishmen were abstracted or destroyed by our soldiers, irritated by the fight and by a blind and tenacious resistance, is there cause for surprise? Ought not that misfortune to be counted among the fatal and inevitable consequences of war?

It is under this point of view, sustained besides by the principles of right generally recognized, that the government of the Grand Duke has declared that he is not obliged to concede indemnification to those of his subjects who have suffered losses in consequence of the storming of the city of Leghorn, when it was obliged to surrender, after having refused all conciliatory propositions.

In consequence, the government of the Grand Duke of Tuscany has objected to treat the English more favorably than his own subjects. He has not thought it to be a duty to place the English subjects in a more advantageous position, by paying them in character of indemnity sums which are not paid to Tuscan subjects; the more so, inasmuch as if the foreigners had placed their persons and property in security, they would have been able to escape with ease the general misfortunes to which the inhabitants of a besieged city must submit themselves.

These reasons, which the Tuscan government has opposed to the demands of Lord Palmerston, appear to us founded upon principles so high and so unquestionable, that with regret we have seen his excellency persist in such pretensions, notwithstanding the weight of those reasons.

So far from desisting, the English ambassador receives orders to persist energetically, and to cause to be understood that if the claims were not admitted by the Tuscan government, England would be under the necessity of enforcing them by adopting energetic means.

By advice of the English ambassador in Florence, Tuscany proposed to submit the matter to the arbitrament of a third power. Even though a mode of procedure had been adopted in this question which would have permitted a pacific solution, we cannot conceal that, in the presence of other analogous acts more recent and generally known, the categorical language of the English cabinet deserves to attract the attention of those states which have been in the habit of giving a hospitable reception to English subjects.

However disposed the civilized people of Europe may be to expand the limits of the right of hospitality, they will never do so to the extent of according to foreigners a more favorable treatment than that which the laws of the country assure to natives. To place in doubt this

principle of public right, which we are resolved to maintain firm and unchangeable, and to claim for Englishmen established in a foreign country an exceptional position, would be to force, so to say, the other states to place themselves on guard against the consequences of a pretension so contrary to their independence, because they would impose, even by force, other conditions upon the English subjects whom they consent to receive.

We would certainly be the first to adopt that necessary measure, which, it is necessary to confess, would form a notable contrast to the tendency of our epoch to multiply and activate the commercial relations between peoples, and to lessen the distance which separates them.

Let this be as it may, the first right of an independent state is to insure its self-preservation by all the means in its power. From the time that a sovereign, availing himself of his right, finds himself obliged to have recourse to arms to suppress an *insurrection*, and that in the civil war which results the property of foreigners established in the country is in jeopardy, in my view it is a public misfortune, which foreigners should suffer as well as natives, and which does not entitle them to exceptional indemnity, as they neither would have that right if any other calamity should happen proceeding from the will of men.

Such is, in its most simple expression, the questionable point suggested to the Tuscan government. We are impressed with the gravity of the consequences which proceed from the question of knowing if the principle treated of ought or ought not to be respected; and for this reason we obey the necessity of submitting it in the most frank manner to the examination of the British government. It belongs to it to weigh the question in its great wisdom and equity, and this will lead, as we hope, to a quick and satisfactory solution of the question which is being discussed.

You are charged to read this dispatch to the minister of foreign relations of Great Britain.

SCHWARTZENBERG.

(See *Torres Caicedo*, p. 343.)

Dispatch from the Count of Nesselrode to Baron Brunow.

SAINT PETERSBURGH, May 2, 1850.

The cabinet of Saint Petersburg adheres completely to the principles which have served as the basis to the demand of the cabinet of Vienna. Russia is too much interested in the maintenance of the independence of the secondary states and in the repose of Italy, and for this reason cannot but associate itself in this case with the sentiments and political views of Austria.

According to the rules of public right, such as they are understood by Russian policy, it cannot be admitted that a sovereign, obliged, as was the Grand Duke of Tuscany, by the obstinacy of his rebellious subjects to retake a city occupied by the insurgents, should be obliged to indemnify foreign subjects who may have suffered damages in consequence of the assault undertaken against that city.

When a person installs himself in a country other than his own, he accepts the possibility of all the dangers to which he may be exposed in that country. Leghorn revolted; it was necessary to employ arms to reduce it. Some English proprietors have participated in the damages experienced by the native proprietors. Why should they alone have the right to be indemnified for their losses, when the Tuscan government does not indemnify its own subjects?

These reasons are so clear, that Tuscany, having applied to the Emperor, asking his arbitrament, the Emperor, notwithstanding the lively interest which he has for Tuscany, has not been able to accede to its desire. It is not a question of figures, more or less in amount, which is treated of, but of a principle, which his imperial Majesty cannot admit—that is to say, the principle of any indemnification whatever claimed as a legitimate right, much less when it is sought to exact it by force. It would have appeared that he implicitly sanctioned it had he offered his arbitration to the two parties, supposing England had consented to adopt the expedient.

As Tuscany is disposed to tender conciliatory explanations, it could not enter into the intentions of the Russian government to dissuade it from a friendly arrangement with the English government. But the Emperor hopes, from the justice and moderation of the English government itself, that it will not, to obtain it, employ other than conciliatory means also; and the imperial cabinet ought, in so much as it is concerned, at once to make its reservations as to all that which it considers as in small conformity with the recognized maxims of the law of nations.

The cabinet of London ought to recognize that one of the gravest questions for the independence of all the states of the continent is being treated of. In effect, if what England attempts to establish at this moment with respect to Naples and Tuscany should come to be admitted as a precedent, it would result in placing British subjects abroad in an

exceptional position, very superior to the advantages enjoyed by the inhabitants of the other countries, and a situation intolerable for the governments who receive them.

Instead of being, as up to the present time, a benefit to the countries where they establish themselves, and to which they bring, with their wealth and industrial resources, the habits of morality and order which so honorably distinguish the English people, their presence would be a perpetual inconvenience, and, in certain cases, a real affliction. Their presence would be, for the promoters of insurrections, a stimulant to revolt, because, if behind the barricades there should be continually raised the threatening eventuality of future reclamations in favor of English subjects who may have received injury in their property by the suppression, all sovereigns, whom their positions and respective weakness expose to the coercive measures of an English fleet, would become powerless in the presence of an insurrection; they could not dare to use coercive means, and if they used them, would have to examine the details of the operation, estimate the necessity or uselessness of this or that strategic measure, which might expose the English to suffer losses; they would have, finally, to recognize the English government as judge between sovereign and subject in matters of civil war and of interior government.

The Emperor cannot, then, subscribe to such a theory. He will never compromise in the matter of the principles which he has just set forth. For, very much disposed as he may be, and as he always has been, to receive with benevolence individuals belonging to the British nation, his esteem for whose character is known, if claims like those which have been made against Naples and Tuscany may be sustained by force, he would be under the necessity of examining and of fixing in a more formal way the conditions upon which he will henceforth consent to allow to British subjects the right of residence and of property in his states.

The Russian government hopes that the English cabinet will accept these reflections in the impartial spirit in which they have been dictated, and that it will not lose sight of them in the course which it may adopt with respect to Naples and Tuscany. *The cause of these is that of all weak states whose existence is guaranteed alone by the maintenance of the tutelar principles which have just been invoked.* At the present moment, more than ever, the respect of these principles by the great powers alone can preserve Europe from the greatest disturbances.

You will communicate to Lord Palmerston this dispatch, and you will give him a copy of the same.

NESSELRODE.

(See Torres Caicedo, p. 348.)

The United States followed these precedents when declining, in 1866, the request of our citizens that we should ask indemnities for their losses sustained in the bombardment of Valparaiso. See opinion of Attorney-General Stanbery, (12 *Opin.*, page 21.) See also correspondence between Mr. Secretary Marcy and the Count de Sartiges. (*Ex. Doc. No. 9, Senate, 35th Congress, 1st session.*)

3.—CAPTURES BY FEDERAL CRUISERS.

The rule on this subject was laid down, in terms which have become classical and accepted as the standard authority in all Europe, by Lord Mansfield, in the memoir on the Silesian loan :

The law of nations, founded upon justice, equity, convenience, and the reason of the thing, and confirmed by long usage, does not allow of reprisals except in case of violent injuries directed or supported by the state, or justice absolutely denied *in re minime dubia* by all the tribunals, and afterward by the prince. Where the judges are left free, and give sentence according to their conscience, though it should be erroneous, that would be no ground for reprisals. Upon doubtful questions, different men think and judge differently; and all a foreigner can desire is, that justice should be impartially administered to him, as it is to the subjects of that prince in whose courts the matter is tried.

That our admiralty courts had all the intelligence and impartiality that can be required was repeatedly admitted by leading members of the British government during the rebellion. The following extracts are selected for the reason that the speeches from which they are taken were made at a late period of the war, and after a very great number of adjudications had been made, and had become known to the British government.

On the 12th February, 1864, in reply to strictures on some decisions in prize-cases, the attorney-general, Sir Roundell Palmer, said, in the House of Commons:

Though in the judgments of the United States prize-court there may be passages open to criticism upon matters of legal theory, and although I am far from saying that they have always applied the principles of law correctly to the facts of the case, yet I am not aware of one single decision pronounced during the war in any one of those courts which does not bear upon the face of it signs of an honest intention to administer the law as received in the United States; and the case of the *Springbok* is no exception to that rule. In all the three points to which my honorable friend has referred, whether or no the principles were rightly applied to the facts and evidence, the decision came to be based on principles, be they right or be they wrong, which were principles of our own prize-courts in the war with France.

In the same debate Lord Palmerston said:

I think it right, however, to state, with regard to the Government of the United States, what has indeed been already stated by my honorable and learned friend, the attorney-general, that we have no reason to mistrust the equity and independence of the tribunals of the United States which have to try questions such as those now under discussion; and it is but due to the Government of the United States to say that they have invariably received our representations in a spirit of respect, equity, and justice. And in proof of this, to show that, when we had a strong case of remonstrance, justice has been done to us by the United States, I need only refer to the case of the *Trent*, in which the Government of the United States very handsomely and properly did justice to the demands we made, and the rights they did not deny. Therefore, I think it is prejudicial to the good understanding between the two governments, which are on good terms, that we should here accuse a foreign government of that of which it is not guilty, and express mistrust of their equity and fairness when nothing has occurred to justify us in making these imputations. I think it only right, in regard to the tribunals and Government of the United States, to declare that such accusations are not just, and that nothing has occurred to warrant them.

The confidence of each of the two governments in the integrity and ability of the prize-courts of the other has, since all the transactions which can come under examination by the high commission, been evinced by an act without parallel in diplomatic history.

The additional convention in relation to the slave-trade, concluded June 3, 1870, provides:

ARTICLE III.

It is agreed that in case of an American merchant vessel, searched by a British cruiser, being detained as having been engaged in the African slave-trade, or as having been fitted out for the purposes thereof, she shall be sent to New York or Key West, whichever shall be most accessible, for adjudication, or shall be handed over to a United States cruiser, if one should be available in the neighborhood of the capture; and that in the corresponding case of a British merchant vessel, searched by a United States cruiser, being detained as having been engaged in the African slave-trade, or as having been fitted out for the purposes thereof, she shall be sent for adjudication to the nearest or most accessible British colony, or shall be handed over to a British cruiser, if one should be available in the neighborhood of the capture.

* * * * *

Under this provision, Great Britain submits to the adjudication of our courts the validity of captures made by her own cruisers, and it results from this and from the fifth article of the original treaty, (12 *Stat.*, 1232,) that if an American court pronounces against the capture of an American vessel by a British cruiser, and awards restitution with damages, the British government stands engaged to pay such damages within one year.

4.—TREATMENT OF BRITISH SUBJECTS AS TO PERSONAL RIGHTS—ARBITRARY ARRESTS—COMPULSORY MILITARY SERVICE, ETC.

This head of possible inquiry by the high commission is treated with such general candor and fairness by Professor Mountague Bernard, in

Chap. XVI of his "Neutrality of Great Britain during the American Civil War," and in Mr. Abbott's memorandum, appended to the report of the British commissioners on the laws of naturalization and allegiance, from which Professor Bernard makes considerable citation, that it seems unnecessary to do more than refer the high commission to those papers.

It may be convenient, however, to furnish references to some of the authorities which establish the liability of persons domiciled, for commercial purposes, in a belligerent region to be treated as indistinguishable from the active enemies, in the midst of whom they are found.

Professor Abdy's edition of Kent on International Law, chap. v., being section iv of Kent's Commentaries, vol. 1, page 75, *et seq.*, of original pagination; Wildman Inter. Law, vol. 2, page 49 and page 78; Phillimore, vol. 3, page 128; Calvo, tome 1, page 292; The Pizarro, (2 Wheaton, 246;) Laurent's case, joint commission under treaty of 1853, between the United States and Great Britain, page 120 *et seq.*

Note.

Since these instructions were given a British blue-book, relating to the "Claims of British subjects against the United States Government, from the commencement of the civil war to the 30th of March, 1864," which had been reprinted in the diplomatic correspondence, submitted to Congress in the year 1864, (Diplomatic correspondence, 1864, part I, page 736,) has been reprinted in one of the leading journals of the country, with a view undoubtedly of enabling the public to see that most of the claims described in it have been disposed of.

An analysis of that document shows the following results:

Three hundred and twenty-one cases of the four hundred and fifty therein enumerated have been disposed of.

Of these forty-three were cases in which the British government refused to interfere, on the advice of the law officers of the Crown.

One hundred and sixty-seven cases have been condemned by the prize-courts of the United States. With the exception of one case, that of the Springbok, the Department of State is not aware of a disposition on the part of the British government to dissent to any final adjudication of the Supreme Court of the United States in a prize-case. The Supreme Court has in several cases reversed condemnations made by the inferior tribunals of prizes, in some of which Congress has made appropriations for the indemnification of the owners of the property captured.

In most of the cases where it is stated that vessels have been condemned, but that appeals are pending, the condemnations by the courts below have been sustained.

In sixty-three cases it appears that property taken by the United States has been restored, and that persons imprisoned, or said to have been illegally enlisted, have been released.

While the conferences were being held in Washington, a correspondence was going on in England between the foreign office and British subjects residing in France, and preferring claims for the loss of property since the entry of the German army into France. A portion of this correspondence has been published in Blue-Book No. 4, for 1871, Franco-German War. The following letters from this publication bear directly upon the questions considered in this portion of the "confidential memorandum."

No. 3.

*Earl Granville to Lord Lyons.*FOREIGN OFFICE, *January 11, 1871.*

MY LORD: I have received your excellency's dispatch of the 6th instant, inclosing a letter from Mr. Kirby, an English gentleman, established with his family at La Ferté Imbault, complaining of the conduct of the German troops in making requisitions on his property; and I have to instruct you to acquaint that gentleman that much as Her Majesty's government regret the inconvenience and loss to which he and his family were exposed, it is out of their power to interfere to obtain any redress for him, inasmuch as foreigners residing in a country which is the seat of war are equally liable with the natives of this country to have requisitions levied on their property by the belligerents.

I am, &c.,

GRANVILLE.

No. 10.*Earl Granville to Mr. West.*FOREIGN OFFICE, *March 1, 1871.*

SIR: I have consulted the law-officers of the Crown upon the point submitted to me in your dispatch of the 24th February, as to the claims of British subjects to be indemnified for the loss of property during the war; and I have now to acquaint you that I am advised by them that Her Majesty's subjects resident in France, whose property has been destroyed during the war, cannot expect to be compensated, on the ground of their being British subjects, for losses which the necessities of war have brought upon them in common with French subjects.

I am, &c.,

GRANVILLE.

FOREIGN OFFICE, *March 28, 1871.*

SIR: I am directed by Earl Granville to acknowledge the receipt of your letter of the 22d instant, containing a statement of certain property possessed by you in Paris and the neighborhood, and referring to the losses which you state you have sustained in consequence of the occupation of such property by French and German troops, and requesting that your interests may be placed under the protection of Lord Lyons, with the object of your claim being ultimately urged upon the French government on account of such losses and dilapidations.

I am now to inform you that Lord Granville has taken the opinion of the law-officers of the Crown as to the liability of the French government to compensate British subjects resident in France for loss and damage to their property during the late war, and that his lordship has been advised by them that the British subjects resident in France would have, in their opinion, no just ground of complaint against the French authorities in the event of their property having been destroyed by the invading armies; their losses under such circumstances would be among the inevitable consequences of war raging in a state within

which they have chosen, as foreigners, to take up their residence; and with regard to such losses British subjects would not be entitled to claim any compensation from the French authorities.

I am, &c.,

E. HAMMOND.

No. 22.

Mr. Stewart to Earl Granville.—(Received August 31.)

33 UPPER BRUNSWICK PLACE,
BRIGHTON, March 30, 1871.

MY LORD: I have the honor to acknowledge your lordship's letter of the 28th instant, in answer to mine of the 22d, on the subject of the losses I have sustained by the occupation of my houses in Paris and its neighborhood by French troops during the late war, informing me that your lordship had taken the opinion of the law-officers of the Crown as to the liability of the French government to compensate British subjects resident in France for loss and damage to their property during the late war; and that your lordship had been advised by them that British subjects resident in France would have, in their opinion, no just ground of complaint against the French authorities in the event of their property having been destroyed by the invading armies.

I beg to submit to your lordship that my case does not come within the terms of the one submitted to the law-officers of the Crown. At the commencement of the siege of Paris all the inhabitants of Boulogne-sur-Seine were ordered by the French government to leave their houses, and my tenant at No. 5 Avenue des Princes, Boulogne-sur-Seine, accordingly removed his furniture and gave up possession to the authorities, who occupied the premises for more than five months, with upward of 150 French soldiers, who remained in it until the signature of the treaty of peace, and then left it in the most ruinous condition. The German troops passed one night on the premises after the temporary occupation of Paris, but did no additional damage to the property. My other houses within the *enceinte* of Paris were occupied wholly by French troops and French peasants. "No destruction of property by invading armies" consequently took place in my case.

In my opinion, my claim is similar to that made by your lordship on the German Government for the loss sustained by British ship-owners whose vessels were seized and sunk near Rouen. In the one case ships were seized and destroyed by the German authorities; and, in the other, houses were seized and destroyed by the French authorities, both belonging to British subjects, and demanding similar compensation.

I have now, therefore, to beg that your lordship will be so good as to forward my claim on the French government to Lord Lyons, with a request that his excellency will give me such assistance as may be required in his capacity of English ambassador, in order to induce the French government to entertain my claim when the proper time shall arrive for submitting it to the authorities. I beg, however, to add that I am informed that, by the law of France, compensation is due not only to foreigners, but to French subjects for injury done to their property by invading armies, and for the occupation of their houses by French troops, and for damages resulting therefrom. I trust, therefore, that it will not be necessary to call for Lord Lyons's intervention.

I have thought it my duty to trouble your lordship with this letter,

in order that I may point out the difference between my case and that submitted to the law-officers of the Crown, and I may add that I think it will be found that few British subjects are in the same position as I am with respect to my French property.

I have, &c.,

CHAS. STEWART.

No. 23.

Viscount Enfield to Mr. Stewart.

FOREIGN OFFICE, April 13, 1871.

SIR: I am directed by Earl Granville to acknowledge the receipt of your letter of the 30th ultimo, in which, with reference to the answer which Lord Granville caused to be returned to your letter of the 22d of March, respecting the losses which you state you have sustained by the occupation of your houses in Paris and the neighborhood by French troops during the war, you now submit that your case does not come within the terms of that which had been submitted to the law-officers of the Crown, and upon whose opinion with reference thereto the answer to your representation had been founded, inasmuch as there was "no destruction of property by invading armies," but that the damage was caused in consequence of the occupation of your property by French troops, which property had been vacated by orders of the French authorities themselves.

I am now to state to you that Lord Granville has taken the opinion of the law-officers upon your further application, and I am to observe that Her Majesty's subjects resident in France cannot of right claim to be in a better position in respect to their immovable property in France than French subjects, and that, if you have been correctly informed as to the law of France, the intervention of Her Majesty's government will not be required to enable you to prefer a claim before the French authorities to compensation for any losses resulting to you from the occupation of your houses by French troops. But whether you have been correctly informed or not, Her Majesty's government cannot intervene, if you receive at the hands of the French government the same treatment which French subjects themselves receive.

With regard to your allusion to the case of the British ships which have sunk at Rouen, I am to observe that there is no analogy between ships and immovable property.

I am, &c.,

ENFIELD.

Another pertinent case has recently been decided by the British government against a claimant. Mr. Worth, a British subject, claimed indemnity on account of imprisonment to which he was subjected by the German authorities on his capture, in an attempt to escape from Paris in a balloon.

Lord Enfield, in a note of the 3d of April, informs Mr. Worth that Lord Granville regrets that, "*after consultation with the proper law-adviser of the Crown, he does not feel justified in placing such a claim on your (Mr. Worth's) behalf before the German government.*"—*British Blue-Book*, 1871; *Correspondence respecting the imprisonment of Mr. Worth by the Prussians.*

IV.—INSTRUCTIONS TO THE BRITISH COMMISSIONERS, RE-
PRINTED FROM BLUE-BOOK, “NORTH
AMERICA, No. 3, (1871.)”

IV.—INSTRUCTIONS TO HER MAJESTY'S HIGH COMMISSIONERS.

No. 1.

Earl Granville to Her Majesty's High Commissioners.

FOREIGN OFFICE, *February 9, 1871.*

MY LORD AND GENTLEMEN: The Queen having been graciously pleased to appoint you to be Her Majesty's high commissioners to proceed to Washington for the purpose of discussing in a friendly spirit with commissioners to be appointed by the Government of the United States the various questions on which differences have arisen between Great Britain and that country, and of treating for an agreement as to the mode of their amicable settlement, I inclose the necessary full powers, and have the honor to convey to you the following instructions for your guidance.

It is the earnest desire of Her Majesty's government that the important negotiation with which you are intrusted should be conducted in a mutually conciliatory disposition, and with unreserved frankness in your communications with the high commissioners or members of the Government of the United States with whom you may be placed in communication, and they believe that this object cannot be better attained than by leaving you full discretion as to the manner in which the subjects which may engage your attention should be discussed.

The principal subjects will probably be—

1. The fisheries.
2. The free navigation of the river St. Lawrence and privilege of passage through the Canadian canals.
3. The transit of goods through Maine, and lumber trade down the river Saint John.
4. The Manitoba boundary.
5. The claims on account of the Alabama, Shenandoah, and certain other cruisers of the so-styled Confederate States.
6. The San Juan water-boundary.
7. The claims of British subjects arising out of the civil war.
8. The claims of the people of Canada on account of the Fenian raids.
9. The revision of the rules of maritime neutrality.

Copies of all the correspondence which have been presented to Parliament respecting these questions will be forwarded for your use.

1. The fisheries.

On the termination of the reciprocity treaty of the 5th of June, 1854, by the United States Government, the discussions respecting the rights of American fishermen under Article I of the convention of the 20th of October, 1818, which had been set at rest by the reciprocity treaty, were revived, and, although temporary measures were taken to avoid pressing with severity upon American fishermen by the adoption of a

system of licenses, it has been found impracticable to continue that system indefinitely, and, on its withdrawal, much excitement has been occasioned among the coast population of the Eastern States of the Union by the capture of boats engaged in illegal fishing, contrary to the convention of 1818.

The correspondence will put you in possession of the facts of the several captures, and enable you to judge, and explain, if necessary, how far the pretensions of the American fishermen are exaggerated, and the leniency with which they have been treated under the directions of Her Majesty's government and of the government of the Dominion by the officers charged with the protection of the British fisheries.

Irrespective, however, of the captures and confiscations of boats during the recent fishing season, there are, and have been for many years, differences of interpretation put upon the convention of 1818 by the respective governments, which might, at any time, rise into serious importance.

The two chief questions are: As to whether the expression "three marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions" should be taken to mean a limit of three miles from the coast-line, or a limit of three miles from a line drawn from headland to headland; and whether the proviso that "the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever, is intended to exclude American vessels from coming inshore to traffic, transship fish, purchase stores, hire seamen, &c.

Her Majesty's government would be glad to learn that you were able to arrive at a conclusive understanding with the commissioners of the United States upon the disputed interpretation of the convention of 1818; but they fear that you will find it expedient that a settlement should be arrived at by some other means, in which case they will be prepared for the whole question of the relations between the United States and the British possessions in North America, as regards the fisheries, being referred for consideration and inquiry to an international commission, on which two commissioners, to be hereafter appointed, in consultation with the government of the Dominion, should be the British representatives.

Should the Government of the United States concur in this, it would be advisable that no time should be lost in appointing commissioners on their side, and in the commission commencing its labors; and, as it is scarcely probable that the commissioners will be able to report, and a treaty be framed, before the commencement of the next fishing season, it would be also desirable that you should agree upon some means, by license or otherwise, by which disputes may be avoided in the meanwhile.

2. Free navigation of the river Saint Lawrence and privilege of passing through the Canadian canals.

The President of the United States, in his message at the opening of Congress in December last, referred to the claim of free navigation of the river Saint Lawrence as being an occasion of difference between the two countries.

The fourth article of the reciprocity treaty provided that the citizens and inhabitants of the United States should be allowed to navigate the river Saint Lawrence and the canals of Canada; and Her Majesty's gov-

ernment are not aware that any practical difficulty as to the free navigation of the Saint Lawrence has arisen since the abrogation of that treaty.

The exclusive right to the navigation of the Saint Lawrence was maintained by this country throughout the discussions between the two governments on the subject in 1824-'27, and has been acknowledged as existing by this article of the reciprocity treaty, under which the British government retained the right of suspending the privilege.

Her Majesty's Government are, nevertheless, now willing to admit the principle of the navigation of the Saint Lawrence being free to the citizens of the United States, subject to such tolls and regulations as may be imposed equally on British subjects.

This, however, cannot extend, except as a special privilege to the passage through the canals constructed by Canadian enterprise through British territory, without which, from the strength of the current and dangerous rapids, the navigation of the Saint Lawrence cannot be profitably conducted; and the best course will probably be found to be to refer these questions for detailed examination and mutual arrangement in relation to the transit of goods in bond through Maine, Saint John River lumber trade, navigation of Lake Michigan, passage through the canals in United States territory, and other similar matters, to the commission to be appointed to consider and report upon the fisheries.

5. *The Manitoba boundary.*

The President has already intimated to Congress that he is of opinion that the survey of the boundary along the forty-ninth parallel, which has only been carried out across the Rocky Mountains to the Gulf of Georgia, should be completed from the Lake of the Woods to the foot of the Rocky Mountains.

In this Her Majesty's government concur, and will be ready to appoint a commission for the purpose whenever the United States Government think fit.

5. *The Alabama, Shenandoah, &c., claims.*

Under this head are comprised the claims against Great Britain for damages sustained by the depredations of the Alabama, Shenandoah, and Georgia, the vessels which were furnished on account of the so-styled Confederate States and armed outside of British jurisdiction, and of the Florida, which, though built in England, was armed and equipped in the port of Mobile.

The history of these vessels is so fully explained in the long correspondence which has taken place with regard to them, that it is unnecessary for me now to do more than point out that the claims which have been preferred on account of the Alabama stand on a different footing to those arising from the captures made by the other cruisers; in so far as the Alabama escaped from Liverpool after evidence had been supplied by the United States minister of the service for which she was intended.

Her Majesty's government adhere to the principle of arbitration for the settlement of these claims, which was recognized and adopted in the convention signed by Lord Clarendon and Mr. Reverdy Johnson as being, in their opinion, the most appropriate mode of settling this question; and, should arbitration be adopted, Her Majesty's government would concur, if the United States Government proposed it, in jurists

properly selected being made the arbitrators instead of a sovereign or state, as provided in the late convention.

Although, however, Her Majesty's government are of opinion that arbitration is the most appropriate mode of settlement, you are at liberty to transmit for their consideration any other proposal which may be suggested for determining and closing the question of these claims.

For the escape of the *Alabama* and consequent injury to the commerce of the United States, Her Majesty's government authorize you to express their regret in such terms as would be agreeable to the Government of the United States and not inconsistent with the position hitherto maintained by Her Majesty's government as to the international obligations of neutral nations.

6. *The San Juan water-boundary.*

The line of water-boundary under the first article of the treaty of June 15, 1846, upon which the British and American commissioners appointed for its demarkation differed, was proposed by Lord Russell as a fit subject for arbitration in 1859; but, owing to the civil war, the negotiations then instituted were not brought to a conclusion, and it was not until the 14th of January, 1869, that a convention was signed between Lord Clarendon and Mr. Reverdy Johnson for referring the matter to an arbitrator; the president of the Swiss confederation being selected at the instance of the Government of the United States.

Although this convention was recommended by the Senate Committee on Foreign Affairs for ratification,* it has not been brought before the Senate, and the period within which its ratification should have taken place has now expired.

This delay has been accounted for by the United States Government as having been occasioned by the delay, necessarily unavoidable, in carrying through the Imperial Parliament the measures required for enabling the naturalization treaty to be concluded; the two treaties having been in the first instance included in the same negotiation under the protocol of the 10th of November, 1868, upon which the treaty of the 14th of January, 1869, was framed.

The naturalization treaty having been ratified some months ago, Her Majesty's government trust that the Government of the United States will no longer hesitate to act upon the water-boundary treaty, which should in that case be appended to and form part of the general treaty for the mode of settlement of all outstanding differences which you are empowered to sign.

Should, however, a form of arbitration admitting of more free discussion be preferred, Her Majesty's government would assent to such a proposal.

7. *The claims of British subjects.*

Through the negotiations on the *Alabama*, *Shenandoah*, &c., claims, Her Majesty's government have always urged that any satisfactory settlement of those claims must be accompanied by a simultaneous settlement of the claims of British subjects arising out of the civil war, and provision was made for this purpose in the claims convention.

Her Majesty's government would expect that the Government of the United States would readily consent to all claims of British subjects against the United States, or of United States citizens against Great

* See North America, No. 1, (1869,) p. 44.

Britain, being referred to a mixed commission, formed of one commissioner for each country and an umpire, as was done under the convention of the 8th of February, 1853.

8. *The claims of the people of Canada on account of the Fenian raids.*

In connection with the claims of British subjects there is a claim on the part of the people of the Dominion of Canada for losses in life and property and expenditure, occasioned by the filibustering raids on the Canadian frontier, carried on from the territory of the United States in the years 1866 and 1870.

The government of the Dominion having solicited Her Majesty's government to bring this claim before the Government of the United States, were requested some time ago to prepare a statement to be submitted to that Government, but it has not yet been received.

In the meanwhile the accompanying account of the Fenian brotherhood, which has been drawn up by Lord Tenterden, will supply you with full information as to the encouragement and support rendered in the United States to this and other Irish-American revolutionary societies.

9. *Revision of rules of maritime neutrality.*

It would be desirable to take this opportunity to consider whether it might not be the interest of both Great Britain and the United States to lay down certain rules of international comity in regard to the obligations of maritime neutrality, not only to be acknowledged for observance in their future relations, but to be recommended for adoption to the other maritime powers.

I have thus touched briefly upon the subjects likely, principally, to engage your attention, and have indicated the manner in which they may be possibly treated; but Her Majesty's government wish you to understand that you are not thereby precluded from entertaining the consideration of other questions or making any suggestions you may think proper for their settlement.

Her Majesty's government request, however, that if the mode of dealing with any particular matter which you may be disposed to agree to should vary materially from the manner of settlement to which I have informed you Her Majesty's government are prepared at once to assent, or, in case of any disagreement of importance occurring between yourselves and the American High Commissioners, you should at once report by telegraph, and await further instructions.

I am, &c.,

GRANVILLE.

No. 2.

Earl Granville to Her Majesty's High Commissioners.

FOREIGN OFFICE, *February 9, 1871.*

MY LORD AND GENTLEMEN: With reference to my other dispatch of this day's date, in which I have adverted to the revision of the rules of maritime neutrality as being one of the subjects which will probably be presented for your consideration, I have to state to you that the

extent to which a neutral country may be hereafter held justly liable for the dispatch, after notice, of a vessel under similar circumstances to those in the case of the *Alabama* cannot be precisely defined in the present stage of the controversy; but there are other points in which it may be convenient to you to be informed beforehand that this government are willing to enter into an agreement.

These are—

That no vessel employed in the military or naval service of any belligerent which shall have been equipped, fitted out, armed, or dispatched contrary to the neutrality of neutral state should be admitted into any port of that state.

That prizes captured by such vessels, or otherwise captured in violation of the neutrality of any state, should, if brought within the jurisdiction of that state, be restored.

That, in time of war, no vessel should be recognized as a ship of war, or received in any port of a neutral state as a ship of war, which has not been commissioned in some port in the actual occupation of the government by whom her commission is issued.

The first of these rules has been incorporated into the foreign-enlistment act, passed during the last year, and both the first and second were included in the report of the royal commission for inquiring into the neutrality laws.

I am, &c.,

GRANVILLE.

No. 3.

Earl Granville to the Lord High Commissioners.

FOREIGN OFFICE, *February 9, 1871.*

MY LORD AND GENTLEMEN: I have to inform you that Lord Tenterden has been appointed secretary of the High Commission, and will proceed to Washington accordingly.

I am, &c.,

GRANVILLE.

V.—PROTOCOLS OF CONFERENCES BETWEEN THE AMERICAN
COMMISSIONERS AND THE BRITISH COMMISSIONERS,
HELD AT WASHINGTON, BETWEEN FEB-
RUARY 27 AND MAY 6, 1871.

V.—PROTOCOLS OF CONFERENCES.

I.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *February 27, 1871.*

The High Commissioners having met, their full powers were respectively produced, which were found satisfactory, and copies thereof exchanged, as follows :

ULYSSES S. GRANT, *President of the United States of America, to all who shall see these presents, greeting :*

Know ye that, reposing special trust and confidence in the integrity and ability of Hamilton Fish, Secretary of State ; Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain ; Samuel Nelson, an Associate Justice of the Supreme Court of the United States ; Ebenezer R. Hoar, of Massachusetts, and George H. Williams, of Oregon, I have nominated and, by and with the advice and consent of the Senate, do appoint them, jointly and severally, to be Commissioners on the part of the United States, in a Joint High Commission between the United States and Great Britain ; hereby empowering them, jointly and severally, to meet the Commissioners appointed or to be appointed on behalf of Her Britannic Majesty, and with them to treat and discuss the mode of settlement of the different questions which shall come before the said Joint High Commission, and the said office to hold and exercise during the pleasure of the President of the United States, for the time being.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand at the city of Washington, this tenth day of February, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the United States of America the ninety-fifth.

U. S. GRANT.

By the President :

HAMILTON FISH,
Secretary of State.

VICTORIA, REG.—VICTORIA, *by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c., &c., &c., To All and Singular to whom these Presents shall come, Greeting !*

Whereas for the purpose of discussing in a friendly spirit, with Commissioners to be appointed on the part of our Good Friends The United States of America, the various questions on which differences have arisen between Us and Our said Good Friends, and of treating for an Agreement as to the mode of their amicable settlement, We have judged it expedient to invest fit persons with Full Power to conduct on Our Part the discussions in this behalf :—Know Ye, therefore, that We, reposing especial Trust and Confidence in the Wisdom, Loyalty, Diligence, and Circumspection of Our Right Trusty and Right Well-beloved Cousin

and Councillor George Frederick Samuel Earl de Grey and Earl of Ripon, Viscount Goderich, Baron Grantham, a Baronet, a Peer of Our United Kingdom, President of our Most Honourable Privy Council, Knight of Our Most Noble Order of the Garter, &c., &c.; of Our Right Trusty and Well-beloved Councillor Sir Stafford Henry Northcote, Baronet, a Member of Parliament, Companion of Our Most Honourable Order of the Bath, &c., &c.; of Our Trusty and Well-beloved Sir Edward Thornton, Knight Commander of Our Most Honourable Order of the Bath, Our Envoy Extraordinary and Minister Plenipotentiary to Our Good Friends The United States of America; of Our Trusty and Well-beloved Sir John Alexander Macdonald, Knight Commander of Our Most Honourable Order of the Bath, a Member of Our Privy Council for Canada, and Minister of Justice and Attorney-General of our Dominion of Canada; and of Our Trusty and Well-beloved Montague Bernard, Esquire, Chichele Professor of International Law in the University of Oxford; have named, made, constituted, and appointed, as We do by these Presents, name, make, constitute, and appoint them Our undoubted High Commissioners, Procurators, and Plenipotentiaries:—Giving to them, or to any three or more of them, all manner of Power and Authority to treat, adjust, and conclude with such Minister or Ministers as may be vested with similar Power and Authority on the part of Our Good Friends The United States of America, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for Us, and in Our Name, everything so agreed upon and concluded, and to do and transact all such other matters as may appertain to the finishing of the aforesaid work in as ample manner and form, and with equal force and efficacy, as We Ourselves could do, if Personally Present:—Engaging and Promising upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said High Commissioners, Procurators, and Plenipotentiaries, shall be agreed to, acknowledged, and accepted by Us in the fullest manner, and that We will never suffer, either in the whole or in part, any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our Power.

In Witness whereof We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court at Windsor Castle, the Sixteenth day of February, in the year of Our Lord One Thousand Eight Hundred and Seventy-One, and in the Thirty-Fourth Year of our Reign.

It was proposed by the British High Commissioners that Mr. Fish, Secretary of State of the United States, should preside.

The United States Commissioner stated that, although appreciating the proposal, they did not consider it necessary that a president should be named.

The High Commissioners, on the suggestion of Mr. Fish, requested Lord Tenterden, Secretary to the British High Commission, and Mr. Bancroft Davis, Assistant Secretary of State of the United States, acting as secretary to the United States High Commission, to undertake the duties of joint protocolists.

The High Commissioners then agreed that the subjects for discussion should be those mentioned in the following correspondence which had taken place between the two Governments.

1. *Sir Edward Thornton to Mr. Fish.*

WASHINGTON, January 26, 1871.

SIR: In compliance with an instruction which I have received from Earl Granville, I have the honor to state that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects, respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States toward those possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, I am directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government; shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the fisheries, as well as all those which affect the relations of the United States toward Her Majesty's possessions in North America.

I am confident that this proposal will be met by your Government in the same cordial spirit of friendship which has induced Her Majesty's Government to tender it, and I cannot doubt that in that case the result will not fail to contribute to the maintenance of the good relations between the two countries, which I am convinced the Government of the United States, as well as that of Her Majesty, equally have at heart.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

EDWARD THORNTON.

Hon. HAMILTON FISH, &c., &c.

2. *Mr. Fish to Sir Edward Thornton.*

DEPARTMENT OF STATE,

Washington, January 30, 1871.

SIR: I have the honor to acknowledge the receipt of your note of January 26, in which you inform me, in compliance with instructions from Earl Granville, that Her Majesty's Government deem it of importance to the good relations which they are ever anxious should subsist and be strengthened between the United States and Great Britain, that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights which belong to the citizens of the United States and Her Majesty's subjects, respectively, with reference to the fisheries on the coasts of Her Majesty's possessions in North America, and as to any other questions between them which affect the relations of the United States toward those possessions; and further, that as the consideration of these questions would involve investigations of a somewhat complicated nature, and as it is very desirable that they should be thoroughly examined, you are directed by

Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission, which shall be composed of members to be named by each Government; shall hold its sessions at Washington, and shall treat of and discuss the mode of settling the different questions which have arisen out of the fisheries, as well as all those which affect the relations of the United States toward Her Majesty's possessions in North America.

I have laid your note before the President, who instructs me to say that he shares with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission, and he fully recognizes the friendly spirit which has prompted the proposal.

The President is, however, of the opinion that, without the adjustment of a class of questions not alluded to in your note, the proposed High Commission would fail to establish the permanent relations and the sincere, substantial, and lasting friendship between the two Governments which, in common with Her Majesty's Government, he desires should prevail.

He thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable relations between the two Governments. He directs me to say that should Her Majesty's Government accept this view of the matter, and assent that this subject also may be treated of by the proposed High Commission, and may thus be put in the way of a final and amicable settlement, this Government will, with much pleasure, appoint High Commissioners on the part of the United States, to meet those who may be appointed on behalf of Her Majesty's Government, and will spare no efforts to secure, at the earliest practical moment, a just and amicable arrangement of all the questions which now unfortunately stand in the way of an entire and abiding friendship between the two nations.

I have the honor to be, with the highest consideration, sir, your obedient servant,

HAMILTON FISH.

Sir EDWARD THORNTON, *K. C. B., &c., &c., &c.*

3. *Sir Edward Thornton to Mr. Fish.*

WASHINGTON, *February 1, 1871.*

SIR: I have the honor to acknowledge the receipt of your note of the 30th ultimo, and to offer you my sincere and cordial thanks for the friendly and conciliatory spirit which pervades it.

With reference to that part of it in which you state that the President thinks that the removal of the differences which arose during the rebellion in the United States, and which have existed since then, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama" claims, will also be essential to the restoration of cordial and amicable relations between the two Governments, I have the honor to inform you that I have submitted to Earl Granville the opinion thus expressed by the President of

the United States, the friendliness of which, I beg you to believe, I fully appreciate.

I am now authorized by His Lordship to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama" claims were submitted to the consideration of the same High Commission by which Her Majesty's Government have proposed that the questions relating to the British possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission. The expressions made use of in the name of the President in your above-mentioned note, with regard to the "Alabama" claims, convince me that the Government of the United States will consider it of importance that these causes of disputes between the two countries should also, and at the same time, be done away with, and that you will enable me to convey to my Government the assent of the President to the addition which they thus propose to the duties of the High Commission, and which cannot fail to make it more certain that its labors will lead to the removal of all differences between the two countries.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

EDWARD THORNTON.

Hon. HAMILTON FISH, &c., &c., &c.

4. *Mr. Fish to Sir Edward Thornton.*

DEPARTMENT OF STATE,

Washington, February 3, 1871.

SIR: I have the honor to acknowledge the receipt of your note of the 1st instant, in which you inform me that you are authorized by Earl Granville to state that it would give Her Majesty's Government great satisfaction if the claims commonly known by the name of the "Alabama claims" were submitted to the consideration of the same High Commission by which Her Majesty's Government have proposed that the questions relations to the British possessions in North America should be discussed, provided that all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country, are similarly referred to the same Commission.

I have laid your note before the President, and he has directed me to express the satisfaction with which he has received the intelligence that Earl Granville has authorized you to state that Her Majesty's Government has accepted the views of this Government as to the disposition to be made of the so-called "Alabama claims."

He also directs me to say, with reference to the remainder of your note, that if there be other and further claims of British subjects, or of American citizens, growing out of acts committed during the recent civil war in this country, he assents to the propriety of their reference to the same High Commission; but he suggests that the High Commissioners shall consider only such claims of this description as may be presented

by the Governments of the respective claimants at an early day, to be agreed upon by the Commissioners.

I have the honor to be, with the highest consideration, sir, your obedient servant,

HAMILTON FISH.

Sir EDWARD THORNTON, *K. C. B., &c., &c., &c.*

The Commissioners further determined that the discussion might include such other matters as might be mutually agreed upon.

The meeting of the High Commissioners was then adjourned to the 4th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

II.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 4, 1871.*

The High Commissioners having met, the protocol of the conference held on the 27th of February was read and confirmed.

At the commencement of the conference the United States High Commissioners called attention to the provision in the Constitution of the United States by which the advice and consent of the Senate is required for the ratification of any treaty which may be signed under the authority of the President.

The British High Commissioners stated that they were acquainted with this provision.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 6th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

III.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 6, 1871.*

The High Commissioners having met, the protocol of the conference held on the 4th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 8th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

IV.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 8, 1871.*

The High Commissioners having met, the protocol of the conference held on the 6th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 9th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

V.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 9, 1871.*

The High Commissioners having met, the protocol of the conference held on the 8th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 10th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

VI.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 10, 1871.*

The High Commissioners having met, the protocol of the conference held on the 9th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 13th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

VII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 13, 1871.*

The High Commissioners having met, the protocol of the conference held on the 10th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 14th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

VIII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS OF THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 14, 1871.*

The High Commissioners having met, the protocol of the conference held on the 13th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 15th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

IX.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 15, 1871.*

The High Commissioners having met, the protocol of the conference held on the 14th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 16th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

X.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 16, 1871.*

The High Commissioners having met, the protocol of the conference held on the 15th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 17th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

XI.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 17, 1871.*

The High Commissioners having met, the protocol of the conference held on the 16th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 18th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

XII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 18, 1871.*

The High Commissioners having met, the protocol of the conference held on the 17th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 20th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

XIII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 20, 1871.*

The High Commissioners having met, the protocol of the conference held on the 18th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 22d of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

XIV.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 22, 1871.*

The High Commissioners having met, the protocol of the conference held on the 20th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 23d of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

XV.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 23, 1871.*

The High Commissioners having met, the protocol of the conference held on the 22d of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 25th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

XVI.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 25, 1871.*

The High Commissioners having met, the protocol of the conference held on the 23d of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 27th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

XVII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 27, 1871.*

The High Commissioners having met, the protocol of the conference held on the 25th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 30th of March.

J. C. BANCROFT DAVIS.
TENTERDEN.

XVIII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *March 30, 1871.*

The High Commissioners having met, the protocol of the conference held on the 27th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 3d of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XIX.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 3, 1871.*

The High Commissioners having met, the protocol of the conference held on the 30th of March was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 5th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XX.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 5, 1871.*

The High Commissioners having met, the protocol of the conference held on the 3d of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 6th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXI.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 6, 1871.*

The High Commissioners having met, the protocol of the conference held on the 5th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 8th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH
COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 8, 1871.*

The High Commissioners having met, the protocol of the conference held on the 6th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 10th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXIII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS
ON THE PART OF THE UNITED STATES OF AMERICA AND THE
HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 10, 1871.*

The High Commissioners having met, the protocol of the conference held on the 8th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 12th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXIV.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 12, 1871.*

The High Commissioners having met, the protocol of the conference held on the 10th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 13th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXV.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 13, 1871.*

The High Commissioners having met, the protocol of the conference held on the 12th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 14th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXVI.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 14, 1871.*

The High Commissioners having met, the protocol of the conference held on the 13th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 15th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXVII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 15, 1871.*

The High Commissioners having met, the protocol of the conference held on the 14th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 17th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXVIII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 17, 1871.*

The High Commissioners having met, the protocol of the conference held on the 15th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 18th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXIX.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 18, 1871.*

The High Commissioners having met, the protocol of the conference held on the 17th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 19th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXX.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 19, 1871.*

The High Commissioners having met, the protocol of the conference held on the 18th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 22d of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXXI.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 22, 1871.*

The High Commissioners having met, the protocol of the conference held on the 19th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 24th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXXII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 24, 1871.*

The High Commissioners having met, the protocol of the conference held on the 22d of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 25th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXXIII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 25, 1871.*

The High Commissioners having met, the protocol of the conference held on the 24th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 26th of April.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXXIV.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *April 26, 1871.*

The High Commissioners having met, the protocol of the conference held on the 25th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The conference was adjourned to the 3d of May.

J. C. BANCROFT DAVIS.
TENDERDEN.

XXXV.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *May 3, 1871.*

The High Commissioners having met, the protocol of the conference held on the 25th of April was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The American Commissioners produced the following further full power, under the seal of the United States, authorizing them to conclude and sign a treaty:

ULYSSES S. GYANT, *President of the United States of America, to all to whom these presents shall come, greeting :*

Know ye that whereas, by my power bearing date the 10th day of February last, Hamilton Fish, Secretary of State, Robert C. Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain, Samuel Nelson, an Associate Justice of the Supreme Court of the United States, Ebenezer R. Hoar, of Massachusetts, and George H. Williams, of Oregon, were authorized to meet the commissioners appointed, or to be appointed, on behalf of Her Britannic Majesty, and with them to treat and discuss the mode of settlement of the different questions which should come before them ;

And whereas that meeting and discussion have taken place, and the said mode of settlement has been agreed upon :

Now, therefore, I, Ulysses S. Grant, President of the United States, do hereby appoint the said Hamilton Fish, Robert C. Schenck, Samuel Nelson, Ebenezer R. Hoar, and George H. Williams, jointly and severally, Plenipotentiaries for and in behalf of the United States, and do authorize them, and any or either of them, to conclude and sign any treaty or treaties touching the premises, for the final ratification of the President of the United States, by and with the advice and consent of the Senate, if such advice and consent be given.

In witness whereof I have caused the seal of the United States to be hereunto affixed.

[SEAL.] Given under my hand at the city of Washington, the second day of May, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-fifth.

U. S. GRANT.

By the President:

HAMILTON FISH,
Secretary of State.

This full Power was examined by the British Commissioners and found satisfactory.

The Joint High Commissioners determined that they would embody in a protocol a statement containing an account of the negotiations upon the various subjects included in the Treaty, and they instructed the Joint Protocolists to prepare such an account in the order in which the subjects are to stand in the Treaty.

The conference was adjourned to the 4th of May.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXXVI.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *May 4, 1871.*

The High Commissioners having met, the protocol of the conference held on the 3d of May was read and confirmed.

The High Commissioners then proceeded with the consideration of the matters referred to them.

The Statement prepared by the Joint Protocolists, in accordance with the request of the Joint High Commissioners at the last conference, was then read as follows :

STATEMENTS.

ARTICLES I TO XI.

At the conference held on the eighth of March the American Commissioners stated that the people and Government of the United States felt that they had sustained a great wrong, and that great injuries and losses were inflicted upon their commerce and their material interests by the course and conduct of Great Britain during the recent rebellion in the United States; that what had occurred in Great Britain and her colonies during that period had given rise to feelings in the United States which the people of the United States did not desire to cherish toward Great Britain; that the history of the Alabama and other cruisers which had been fitted out, or armed, or equipped, or which had received augmentation of force in Great Britain or in her colonies, and of the operations of those vessels, showed extensive direct losses in the capture and destruction of a large number of vessels with their cargoes, and in the heavy national expenditures in the pursuit of the cruisers, and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payments of insurance, in the prolongation of the war, and in the addition of a large sum to the cost of the war and the suppression of the rebellion; and also showed that Great Britain, by reason of failure in the proper observance of her duties as a neutral, had become justly liable for the acts of those cruisers and of their tenders; that the claims for the loss and destruction of private property which had thus far been presented amounted to about fourteen millions of dollars, without interest, which amount was liable to be greatly increased by claims which had not been presented; that the cost to which the Government had been put in the pursuit of cruisers could easily be ascertained by certificates of Government accounting officers; that in the hope of an amicable settlement no estimate was made of the indirect losses, without prejudice, however, to the right to indemnification on their account in the event of no such settlement being made.

The American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the Joint High Commission should agree upon a sum which should be paid by Great Britain to the United States, in satisfaction of all the claims and the interest thereon.

The British Commissioners replied that Her Majesty's Government could not admit that Great Britain had failed to discharge toward the United States the duties imposed on her by the rules of International Law, or that she was justly liable to make good to the United States the losses occasioned by the acts of the cruisers to which the American Commissioners had referred. They reminded the American Commissioners that several vessels, suspected of being designed to cruise against the United States, including two iron-clads, had been arrested or detained by the British Government, and that that Government had in some instances not confined itself to the discharge of international obligations, however widely construed, as, for instance, when it acquired at

a great cost to the country the control of the Anglo-Chinese Flotilla, which, it was apprehended, might be used against the United States.

They added that although Great Britain had, from the beginning, disavowed any responsibility for the acts of the Alabama and the other vessels, she had already shown her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, provided that a fitting Arbitrator could be found, and that an agreement could be come to as to the points to which arbitration should apply. They would, therefore, abstain from replying in detail to the statement of the American Commissioners, in the hope that the necessity for entering upon a lengthened controversy might be obviated by the adoption of so fair a mode of settlement as that which they were instructed to propose; and they had now to repeat, on behalf of their Government, the offer of arbitration.

The American Commissioners expressed their regret at this decision of the British Commissioners, and said further that they could not consent to submit the question of the liability of Her Majesty's Government to arbitration unless the principles which should govern the Arbitrator in the consideration of the facts could be first agreed upon.

The British Commissioners replied that they had no authority to agree to a submission of these claims to an Arbitrator with instructions as to the principles which should govern him in the consideration of them. They said that they should be willing to consider what principles should be adopted for observance in future; but that they were of opinion that the best mode of conducting an arbitration was to submit the facts to the Arbitrator, and leave him free to decide upon them after hearing such arguments as might be necessary.

The American Commissioners replied that they were willing to consider what principles should be laid down for observance in similar cases in future, with the understanding that any principles that should be agreed upon should be held to be applicable to the facts in respect to the Alabama Claims.

The British Commissioners replied that they could not admit that there had been any violation of existing principles of International Law, and that their instructions did not authorize them to accede to a proposal for laying down rules for the guidance of the Arbitrator, but that they would make known to their Government the views of the American Commissioners on the subject.

At the respective conferences on March 9, March 10, March 13, and March 14, the Joint High Commission considered the form of the declaration of principles or rules which the American Commissioners desired to see adopted for the instruction of the Arbitrator and laid down for observance by the two Governments in future.

At the close of the conference of the 14th of March the British Commissioners reserved several questions for the consideration of their Government.

At the conference on the 5th of April the British Commissioners stated that they were instructed by Her Majesty's Government to declare that Her Majesty's Government could not assent to the proposed rules as a statement of principles of International Law which were in force at the time when the Alabama Claims arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agreed that in deciding the questions between the two countries arising out of those claims, the Arbitrator should assume that Her Majesty's Government had undertaken to act upon the

principles set forth in the rules which the American Commissioners had proposed, viz:

That a neutral Government is bound, first, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly. Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly. To exercise due diligence in its own ports or waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

It being a condition of this undertaking, that these obligations should in future be held to be binding internationally between the two countries.

It was also settled that in deciding the matters submitted to him the Arbitrator should be governed by the foregoing rules, which had been agreed upon as rules to be taken as applicable to the case, and by such principles of International Law, not inconsistent therewith, as the Arbitrator should determine to have been applicable to the case.

The Joint High Commission then proceeded to consider the form of submission and the manner of constituting a tribunal of arbitration.

At the conferences on the 6th, 8th, 9th, 10th, and 12th of April the Joint High Commission considered and discussed the form of submission, the manner of the award, and the mode of selecting the Arbitrators.

The American Commissioners, referring to the hope which they had expressed on the 8th of March, inquired whether the British Commissioners were prepared to place upon record an expression of regret by Her Majesty's Government for the depredations committed by the vessels whose acts were now under discussion; and the British Commissioners replied that they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the *Alabama* and other vessels from British ports, and for the depredations committed by those vessels.

The American Commissioners accepted this expression of regret as very satisfactory to them and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States.

In the conference on the 13th of April the Treaty Articles I to XI were agreed to.

ARTICLES XII TO XVII.

At the conference on the 4th of March it was agreed to consider the subjects referred to the Joint High Commission by the respective Governments in the order in which they appeared in the correspondence between Sir Edward Thornton and Mr. Fish, and to defer the consideration of the adjustment of "all other claims, both of British subjects and citizens of the United States, arising out of acts committed during the recent civil war in this country," as described by Sir Edward Thornton

in his letter of February 1, until the subjects referred to in the previous letters should have been disposed of.

The American Commissioners said that they supposed that they were right in their opinion that British laws prohibit British subjects from owning slaves; they therefore inquired whether any claims for slaves, or for alleged property or interest in slaves, can or will be presented by the British Government, or in behalf of any British subject, under the Treaty now being negotiated, if there be in the Treaty no express words excluding such claims.

The British Commissioners replied that by the law of England British subjects had long been prohibited from purchasing or dealing in slaves, not only within the dominions of the British Crown but in any foreign country; and that they had no hesitation in saying that no claim on behalf of any British subject, for slaves or for any property or interest in slaves, would be presented by the British Government.

Referring to the paragraph in Sir Edward Thornton's letter of January 26, relating to "the mode of settling the different questions which have arisen out of the Fisheries, as well as all those which affect the relations of the United States towards Her Majesty's Possessions in North America," the British Commissioners proposed that the Joint High Commission should consider the claims for injuries which the people of Canada had suffered from what were known as the Fenian raids.

The American Commissioners objected to this, and it was agreed that the subject might be brought up again by the British Commissioners in connection with the subject referred to by Sir Edward Thornton in his letter of February 1.

At the conference on the 14th of April the Joint High Commission took into consideration the subjects mentioned by Sir Edward Thornton in that letter.

The British Commissioners proposed that a Commission for the consideration of these claims should be appointed, and that the Convention of 1853 should be followed as a precedent. This was agreed to, except that it was settled that there should be a third Commissioner instead of an Umpire.

At the conference on the 15th of April the Treaty Articles XII to XVII were agreed to.

At the conference on the 26th of April the British Commissioners again brought before the Joint High Commission the claims of the people of Canada for injuries suffered from the Fenian raids. They said that they were instructed to present these claims and to state that they were regarded by Her Majesty's Government as coming within the class of subjects indicated by Sir Edward Thornton in his letter of January 26, as subjects for the consideration of the Joint High Commission.

The American Commissioners replied that they were instructed to say that the Government of the United States did not regard these claims as coming within the class of subjects indicated in that letter as subjects for the consideration of the Joint High Commission, and that they were without any authority from their Government to consider them. They therefore declined to do so.

The British Commissioners stated that, as the subject was understood not to be within the scope of the instructions of the American Commissioners, they must refer to their Government for further instructions upon it.

At the conference on the 3d of May the British Commissioners stated that they were instructed by their Government to express their regret that the American Commissioners were without authority to deal with

the question of the Fenian raids, and they inquired whether that was still the case.

The American Commissioners replied that they could see no reason to vary the reply formerly given to this proposal; that in their view the subject was not embraced in the scope of the correspondence between Sir Edward Thornton and Mr. Fish under either of the letters of the former; and that they did not feel justified in entering upon the consideration of any class of claims not contemplated at the time of the creation of the present Commission, and that the claims now referred to did not commend themselves to their favor.

The British High Commissioners said that under these circumstances they would not urge further that the settlement of these claims should be included in the present treaty, and that they had the less difficulty in doing so, as a portion of the claims were of a constructive and inferential character.

ARTICLES XVIII TO XXV.

At the conference on the 6th of March the British Commissioners stated that they were prepared to discuss the question of the Fisheries, either in detail or generally, so as either to enter into an examination of the respective rights of the two countries under the Treaty of 1818 and the general law of nations, or to approach at once the settlement of the question on a comprehensive basis.

The American Commissioners said that with the view of avoiding the discussion of matters which subsequent negotiation might render it unnecessary to enter into, they thought it would be preferable to adopt the latter course, and inquired what, in that case, would be the basis which the British Commissioners desired to propose.

The British Commissioners replied that they considered that the Reciprocity Treaty of June 5, 1854, should be restored in principle.

The American Commissioners declined to assent to a renewal of the former reciprocity treaty.

The British Commissioners then suggested that, if any considerable modification were made in the tariff arrangements of that Treaty, the coasting trade of the United States and of Her Britannic Majesty's Possessions in North America should be reciprocally thrown open, and that the navigation of the River Saint Lawrence and of the Canadian Canals should be also thrown open to the citizens of the United States on terms of equality with British subjects.

The American Commissioners declined this proposal, and objected to a negotiation on the basis of the Reciprocity Treaty. They said that that Treaty had proved unsatisfactory to the people of the United States, and consequently had been terminated by notice from the Government of the United States, in pursuance of its provisions. Its renewal was not in their interest, and would not be in accordance with the sentiments of their people. They further said that they were not at liberty to treat of the opening of the coasting trade of the United States to the subjects of Her Majesty residing in her Possessions in North America. It was agreed that the questions relating to the navigation of the River Saint Lawrence, and of the Canadian Canals, and to other commercial questions affecting Canada, should be treated by themselves.

The subject of the Fisheries was further discussed at the conferences on the 7th, 20th, 22d, and 25th of March. The American Commissioners stated that if the value of the inshore fisheries could be ascertained, the United States might prefer to purchase, for a sum of money, the right

to enjoy, in perpetuity, the use of these inshore fisheries in common with British fishermen, and mentioned one million dollars as the sum they were prepared to offer. The British Commissioners replied that this offer was, they thought, wholly inadequate, and that no arrangement would be acceptable of which the admission into the United States free of duty of fish, the produce of the British fisheries, did not form a part, adding that any arrangement for the acquisition by purchase of the inshore fisheries in perpetuity was open to grave objection.

The American Commissioners inquired whether it would be necessary to refer any arrangement for purchase to the Colonial or Provincial Parliament.

The British Commissioners explained that the Fisheries within the limits of maritime jurisdiction were the property of the several British Colonies, and that it would be necessary to refer any arrangement which might affect Colonial property or rights to the Colonial or Provincial Parliament; and that legislation would also be required on the part of the Imperial Parliament.

During these discussions the British Commissioners contended that these inshore fisheries were of great value, and that the most satisfactory arrangement for their use would be a reciprocal tariff arrangement, and reciprocity in the coasting trade; and the American Commissioners replied that their value was overestimated; that the United States desired to secure their enjoyment, not for their commercial or intrinsic value, but for the purpose of removing a source of irritation; and that they could hold out no hope that the Congress of the United States would give its assent to such a tariff arrangement as was proposed, or to any extended plan of reciprocal free admission of the products of the two countries; but that, inasmuch as one branch of Congress had recently, more than once, expressed itself in favor of the abolition of duties on coal and salt, they would propose that coal, salt, and fish be reciprocally admitted free; and, that, inasmuch as Congress had removed the duty from a portion of the lumber heretofore subject to duty, and as the tendency of legislation in the United States was toward the reduction of taxation and of duties in proportion to the reduction of the public debt and expenses, they would further propose that lumber be admitted free from duty from and after the first of July, 1874, subject to the approval of Congress, which was necessary on all questions affecting import duties.

The British Commissioners, at the conference on the 17th of April, stated that they had referred this offer to their Government, and were instructed to inform the American Commissioners that it was regarded as inadequate, and that Her Majesty's Government considered that free lumber should be granted at once, and that the proposed tariff concessions should be supplemented by a money payment.

The American Commissioners then stated that they withdrew the proposal which they had previously made of the reciprocal free admission of coal, salt, and fish, and of lumber after July 1, 1874; that that proposal had been made entirely in the interest of a peaceful settlement, and for the purpose of removing a source of irritation and of anxiety; and that its value had been beyond the commercial or intrinsic value of the rights to have been acquired in return; and that they could not consent to an arrangement on the basis now proposed by the British Commissioners; and they renewed their proposal to pay a money equivalent for the use of the inshore fisheries. They further proposed that, in case the two Governments should not be able to agree upon the sum to be paid as such an equivalent, the matter should be referred to an impartial Commission for determination.

The British Commissioners replied that this proposal was one on which they had no instructions, and that it would not be possible for them to come to any arrangement except one for a term of years and involving the concession of free fish and fish-oil by the American Commissioners; but that if free fish and fish-oil were conceded, they would inquire of their Government whether they were prepared to assent to a reference to arbitration as to money payment.

The American Commissioners replied that they were willing, subject to the action of Congress, to concede free fish and fish-oil as an equivalent for the use of the inshore fisheries, and to make the arrangement for a term of years; that they were of the opinion that free fish and fish-oil would be more than an equivalent for those fisheries, but that they were also willing to agree to a reference to determine that question and the amount of any money payment that might be found necessary to complete an equivalent, it being understood that legislation would be needed before any payment could be made.

The subject was further discussed in the conferences of April 18 and 19, and the British Commissioners having referred the last proposal to their Government and received instructions to accept it, the Treaty Articles XVIII to XXV were agreed to at the conference on the 22d of April.

ARTICLES XXVI TO XXXIII.

At the conference on the 6th of March the British Commissioners proposed that the Reciprocity Treaty of June 5, 1854, should be restored in principle, and that, if any considerable modifications in the tariff arrangements in force under it were made, the coasting trade of the United States and of Her Britannic Majesty's Possessions in North America should be reciprocally thrown open, and that the navigation of the River St. Lawrence and of the Canadian Canals should be thrown open to the citizens of the United States on terms of equality with British subjects.

The American Commissioners declined this proposal, and in the subsequent negotiations the question of the Fisheries was treated by itself.

At the conference on the 17th of March the Joint High Commission considered the subject of the American improvement of the navigation of the Saint Clair Flats.

At the conference on the 18th of March the questions of the navigation of the River Saint Lawrence and the Canals and the other subjects connected therewith were taken up.

The American Commissioners proposed to take into consideration the question of transit of goods in bond through Canada and the United States, which was agreed to.

The British Commissioners proposed to take into consideration the question of opening the coasting trade of the lakes reciprocally to each party, which was declined.

On the proposal of the British Commissioners it was agreed to take the question of transshipment into consideration.

The British Commissioners proposed to take into consideration the reciprocal registration of vessels, as between the Dominion of Canada and the United States, which was declined.

At the conference on the 23d of March the transshipment question was discussed, and postponed for further information, on the motion of the American Commissioners.

The transit question was discussed, and it was agreed that any settle-

ment that might be made should include a reciprocal arrangement in that respect for the period for which the Fishery articles should be in force.

The question of the navigation of the River Saint Lawrence and the Canals was taken up.

The British Commissioners stated that they regarded the concession of the navigation of Lake Michigan as an equivalent for the concession of the navigation of the River Saint Lawrence.

As to the Canals, they stated that the concession of the privilege to navigate them in their present condition, on terms of equality with British subjects, was a much greater concession than the corresponding use of the Canals offered by the United States.

They further said that the enlargement of the Canals would involve the expenditure of a large amount of money, and they asked what equivalent the American Commissioners proposed to give for the surrender of the right to control the tolls for the use of the Canals, either in their present state or after enlargement.

The American Commissioners replied, that unless the Welland Canal should be enlarged so as to accommodate the present course of trade, they should not be disposed to make any concessions; that in their opinion the citizens of the United States could now justly claim to navigate the River St. Lawrence in its natural state, ascending and descending, from the forty-fifth parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea; and they could not concede that the navigation of Lake Michigan should be given or taken as an equivalent for that right; and they thought that the concession of the navigation of Lake Michigan and of the Canals offered by them was more than an equivalent for the concessions as to the Canadian Canals which were asked. They proposed, in connection with a reciprocal arrangement as to transit and transshipment, that Canada should agree to enlarge the Welland and St. Lawrence Canals, to make no discriminating tolls, and to limit the tolls to rates sufficient to maintain the Canals, pay a reasonable interest on the cost of construction and enlargement, and raise a sinking-fund for the repaying, within a reasonable time, the cost of enlargement; and that the navigation of the River St. Lawrence, the Canadian Canals, the Canals offered by the United States, and Lake Michigan should be enjoyed reciprocally by citizens of the United States and by British subjects. This proposal was declined by the British Commissioners, who repeated that they did not regard the equivalent offered by the United States as at all commensurate with the concessions asked from Great Britain.

At the conference on the 27th of March the proposed enlargement of the Canadian Canals was further discussed. It was stated on the part of the British Commissioners that the Canadian Government were now considering the expediency of enlarging the capacity of the Canals on the River St. Lawrence, and had already provided for the enlargement of the Welland Canal, which would be undertaken without delay.

The subject of the export duty in New Brunswick on American lumber floated down the River St. John, was proposed for consideration by the American Commissioners.

At the conference on the 22d of April the British Commissioners proposed that the navigation of Lake Michigan should be given in exchange for the navigation of the River St. Lawrence; and that Her Majesty's Government should agree to urge upon the Dominion of Canada to give to the citizens of the United States the use of the Canadian Canals on

terms of equality with British subjects; and that the Government of the United States should agree to urge upon the several States to give to British subjects the use of the several State Canals on terms of equality with citizens of the United States. They also proposed, as part of the arrangement, a reciprocal agreement as to transit and transshipment, and that the Government of Great Britain should urge upon New Brunswick not to impose export duties on the lumber floated down the River St. John for shipment to the United States.

The American Commissioners repeated their views as to the navigation of the River St. Lawrence in its natural state.

The British Commissioners replied that they could not admit the claims of American citizens to navigate the River St. Lawrence as of right; but that the British Government had no desire to exclude them from it. They, however, pointed out that there were certain rivers running through Alaska which should on like grounds be declared free and open to British subjects, in case the River St. Lawrence should be declared free.

The American Commissioners replied that they were prepared to consider that question. They also assented to the arrangement as to the canals, which was proposed by the British Commissioners, limiting it, as regarded American Canals, to the canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary-line between the British and American possessions. They likewise agreed to give the right of navigating Lake Michigan for a term of years. They desired, and it was agreed, that the transshipment arrangement should be made dependent upon the non-existence of discriminating tolls or regulations on the Canadian Canals, and also upon the abolition of the New Brunswick export duty on American lumber intended for the United States. It was also agreed that the right of carrying should be made dependent upon the non-imposition of export duties on either side on the goods of the other party passing in transit.

The discussion of these subjects was further continued at the conferences of the 24th, 25th, and 26th of April, and the Treaty Articles XXVI to XXXIII were agreed to at the conference on the 3d of May.

In the course of these discussions the British Commissioners called attention to the question of the survey of the boundary-line along the forty-ninth parallel, which still remained unexecuted from the Lake of the Woods to the Rocky Mountains, and to which reference had been made in the President's Message.

The American Commissioners stated that the survey was a matter for administrative action, and did not require to be dealt with by a treaty provision. The United States Government would be prepared to agree with the British Government for the appointment of a boundary survey commission in the same manner as had been done in regard to the remainder of the boundary along the forty-ninth parallel as soon as the legislative appropriations and other necessary arrangements could be made.

ARTICLES XXXIV TO XLII.

At the conference on the 15th of March the British Commissioners stated that it was proposed that day to take up the Northwest water-boundary question; that the difference was one of long standing, which had more than once been the subject of negotiations between the two Governments, and that the negotiators had, in January, 1869, agreed upon a treaty. They then proposed that an arbitration of this question should be made upon the basis of the provisions of that Treaty.

The American Commissioners replied that, though no formal vote was actually taken upon it, it was well understood that that Treaty had not been favorably regarded by the Senate. They declined the proposal of the British Commissioners, and expressed their wish that an effort should be made to settle the question in the Joint High Commission.

The British Commissioners assented to this, and presented the reasons which induced them to regard the Rosario Straits as the channel contemplated by the Treaty of June 15, 1846.

The American Commissioners replied, and presented the reasons which induced them to regard the Haro Channel as the channel contemplated by that Treaty. They also produced in support of their views some original correspondence of Mr. Everett with his Government, which had not been alluded to in previous discussions of the question.

The British Commissioners replied that they saw in that correspondence no reason to induce them to change the opinion which they had previously expressed. They then asked whether the American Commissioners had any further proposal to make.

The American Commissioners replied that, in view of the position taken by the British Commissioners, it appeared that the Treaty of June 15, 1846, might have been made under a mutual misunderstanding, and would not have been made had each party understood at that time the construction which the other party puts upon the language whose interpretation is in dispute; they therefore proposed to abrogate the whole of that part of the Treaty, and re-arrange the boundary-line which was in dispute before that Treaty was concluded.

The British Commissioners replied that the proposal to abrogate a treaty was one of a serious character, and that they had no instructions which would enable them to entertain it; and at the conference on the 20th of March the British Commissioners declined the proposal.

At the conference on the 19th of April the British Commissioners proposed to the American Commissioners to adopt the Middle Channel (generally known as the Douglas Channel) as the channel through which the boundary-line should be run, with the understanding that all the channels through the Archipelago should be free and common to both parties.

The American Commissioners declined to entertain that proposal. They proposed that the Joint High Commission should recognize the Haro Channel as the channel intended by the Treaty of June 15, 1846, with a mutual agreement that no fortifications should be erected by either party to obstruct or command it, and with proper provisions as to any existing proprietary rights of British subjects in the island of San Juan.

The British Commissioners declined this proposal, and stated that, being convinced of the justice of their view of the Treaty, they could not abandon it except after a fair decision by an impartial arbitrator. They therefore renewed their proposal for a reference to arbitration, and hoped that it would be seriously considered.

The American Commissioners replied that they had hoped that their last proposal would be accepted. As it had been declined, they would, should the other questions between the two Governments be satisfactorily adjusted, agree to a reference to arbitration to determine whether the line should run through the Haro Channel or through the Rosario Straits, upon the condition that either Government should have the right to include in the evidence to be considered by the Arbitrator such documents, official correspondence, and other official or public statements, bearing on the subject of the reference, as they may consider

necessary to the support of their respective cases. This condition was agreed to.

The British Commissioners proposed that the Arbitrator should have the right to draw the boundary through an intermediate channel. The American Commissioners declined this proposal, stating that they desired a decision, not a compromise.

The British Commissioners proposed that it should be declared to be the proper construction of the Treaty of 1846 that all the channels were to be open to navigation by both parties. The American Commissioners stated that they did not so construe the Treaty of 1846, and therefore could not assent to such a declaration.

The discussion of this subject was continued during this conference, and in the conference of the 22d of April the Treaty Articles XXXIV to XLII were agreed to.

The Joint High Commissioners approved this statement, and directed it to be entered in the protocol.

The conference was adjourned to the 6th of May.

J. C. BANCROFT DAVIS.
TENTERDEN.

XXXVII.—PROTOCOL OF CONFERENCE BETWEEN THE HIGH COMMISSIONERS ON THE PART OF THE UNITED STATES OF AMERICA AND THE HIGH COMMISSIONERS ON THE PART OF GREAT BRITAIN.

WASHINGTON, *May 6, 1871.*

The High Commissioners having met, the protocol of the conference held on the 4th of May was read and confirmed.

Lord de Grey said, that as the Joint High Commission would not meet again after to-day, except for the purpose of signing the Treaty, he desired, on behalf of himself and his colleagues, to express their high appreciation of the manner in which Mr. Fish and his American colleagues had, on their side, conducted the negotiations. It had been most gratifying to the British Commissioners to be associated with colleagues who were animated with the same sincere desire as themselves to bring about a settlement, equally honorable and just to both countries, of the various questions of which it had been their duty to treat, and the British Commissioners would always retain a grateful recollection of the fair and friendly spirit which the American Commissioners had displayed.

Mr. Fish, in behalf of the American Commissioners, said that they were gratefully sensible of the friendly words expressed by Lord de Grey, and of the kind spirit which had prompted them. From the date of the first conference the American Commissioners had been impressed by the earnestness of desire manifested by the British Commissioners to reach a settlement worthy of the two Powers who had committed to this Joint High Commission the treatment of various questions of peculiar interest, complexity, and delicacy. His colleagues and he could never cease to appreciate the generous spirit, and the open and friendly manner in which the British Commissioners had met and discussed the several questions that had led to the conclusion of a Treaty which it was hoped would receive the approval of the people of both countries, and would prove the foundation of a cordial and friendly understanding between them for all time to come.

Mr. Fish further said that he was sure that every member of the Joint High Commission would desire to record his appreciation of the ability, the zeal, and the unceasing labor which the Joint Protocolists had exhibited in the discharge of their arduous and responsible duties, and that he knew that he only gave expression to the feelings of the Commissioners in saying that Lord Tenterden and Mr. Bancroft Davis were entitled to, and were requested to accept the thanks of, the Joint High Commission for their valuable services, and the great assistance which they had rendered with unvarying obligingness to the Commission.

Lord de Grey replied, on behalf of the British Commissioners, that he and his colleagues most cordially concurred in the proposal made by Mr. Fish that the thanks of the Joint High Commission should be tendered to Mr. Bancroft Davis and Lord Tenterden for their valuable services as Joint Protocolists. The British Commissioners were also full as sensible as their American colleagues of the great advantage which the Commission had derived from the assistance which those gentlemen had given them in the conduct of the important negotiations in which they had been engaged.

Monday, the 8th of May, was appointed for the signatures of the Treaty.

J. C. BANCROFT DAVIS.
TENTERDEN.

VI.—TREATY OF WASHINGTON, MAY 8, 1871.

VI.—TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN FOR THE SETTLEMENT OF PENDING QUESTIONS BETWEEN THE TWO COUNTRIES, CONCLUDED AT WASHINGTON, ON THE 8TH OF MAY, 1871; RATIFICATION ADVISED BY THE SENATE MAY 24, 1871; RATIFIED BY THE PRESIDENT MAY 25, 1871; RATIFICATIONS EXCHANGED AT LONDON JUNE 17, 1871; PROCLAIMED JULY 4, 1871.

The United States of America and Her Britannic Majesty, being desirous to provide for an amicable settlement of all causes of difference between the two countries, have for that purpose appointed their respective Plenipotentiaries, that is to say: the President of the United States has appointed on the part of the United States as Commissioners in a Joint High Commission and Plenipotentiaries, Hamilton Fish, Secretary of State; Robert Cumming Schenck, Envoy Extraordinary and Minister Plenipotentiary to Great Britain; Samuel Nelson, an Associate Justice of the Supreme Court of the United States; Ebenezer Rockwood Hoar, of Massachusetts; and George Henry Williams, of Oregon; and Her Britannic Majesty on her part has appointed as her High Commissioners and Plenipotentiaries, the Right Honorable George Frederick Samuel, Earl de Grey and Earl of Ripon, Viscount Goderich, Baron Grantham, a Baronet, a Peer of the United Kingdom, Lord President of Her Majesty's Most Honorable Privy Council, Knight of the Most Noble Order of the Garter, etc., etc.; the Right Honorable Sir Stafford Henry Northcote, Baronet, one of Her Majesty's Most Honorable Privy Council, a Member of Parliament, a Companion of the Most Honorable Order of the Bath, etc., etc.; Sir Edward Thornton, Knight Commander of the Most Honorable Order of the Bath, Her Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America; Sir John Alexander Macdonald, Knight Commander of the Most Honorable Order of the Bath, a member of Her Majesty's Privy Council for Canada, and Minister of Justice and Attorney-General of Her Majesty's Dominion of Canada; and Montague Bernard, Esquire, Chichele Professor of International Law in the University of Oxford.

And the said Plenipotentiaries, after having exchanged their full Powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:

ARTICLE I.

Whereas differences have arisen between the Government of the United States and the Government of Her Britannic Majesty, and still exist, growing out of the acts committed by the several vessels which have given rise to the claims generically known as the "Alabama claims;"

And whereas Her Britannic Majesty has authorized Her High Commissioners and Plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels:

Now, in order to remove and adjust all complaints and claims on the part of the United States, and to provide for the speedy settlement of

such claims, which are not admitted by Her Britannic Majesty's Government, the High Contracting Parties agree that all the said claims, growing out of acts committed by the aforesaid vessels and generically known as the "Alabama claims," shall be referred to a Tribunal of Arbitration to be composed of five Arbitrators, to be appointed in the following manner, that is to say : One shall be named by the President of the United States ; one shall be named by Her Britannic Majesty ; His Majesty, the King of Italy, shall be requested to name one ; the President of the Swiss Confederation shall be requested to name one ; and His Majesty, the Emperor of Brazil, shall be requested to name one.

In case of the death, absence, or incapacity to serve of any or either of the said Arbitrators, or in the event of either of the said Arbitrators omitting or declining or ceasing to act as such, the President of the United States, or Her Britannic Majesty, or His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, as the case may be, may forthwith name another person to act as Arbitrator in the place and stead of the Arbitrator originally named by such Head of a State.

And in the event of the refusal or omission for two months after receipt of the request from either of the High Contracting Parties of His Majesty the King of Italy, or the President of the Swiss Confederation, or His Majesty the Emperor of Brazil, to name an Arbitrator either to fill the original appointment or in the place of one who may have died, be absent, or incapacitated, or who may omit, decline, or from any cause cease to act as such Arbitrator, His Majesty the King of Sweden and Norway shall be requested to name one or more persons, as the case may be, to act as such Arbitrator or Arbitrators.

ARTICLE II.

The Arbitrators shall meet at Geneva, in Switzerland, at the earliest convenient day after they shall have been named, and shall proceed impartially and carefully to examine and decide all questions that shall be laid before them on the part of the Governments of the United States and Her Britannic Majesty respectively. All questions considered by the Tribunal, including the final award, shall be decided by a majority of all the Arbitrators.

Each of the High Contracting Parties shall also name one person to attend the Tribunal as its agent to represent it generally in all matters connected with the arbitration.

ARTICLE III.

The written or printed case of each of the two Parties, accompanied by the documents, the official correspondence, and other evidence on which each relies, shall be delivered in duplicate to each of the Arbitrators and to the agent of the other Party as soon as may be after the organization of the Tribunal, but within a period not exceeding six months from the date of the exchange of the ratifications of this Treaty.

ARTICLE IV.

Within four months after the delivery on both sides of the written or printed case, either Party may, in like manner, deliver in duplicate to each of the said Arbitrators, and to the agent of the other Party, a

counter case and additional documents, correspondence, and evidence, in reply to the case, documents, correspondence, and evidence so presented by the other Party.

The Arbitrators may, however, extend the time for delivering such counter case, documents, correspondence, and evidence, when, in their judgment, it becomes necessary, in consequence of the distance of the place from which the evidence to be presented is to be procured.

If in the case submitted to the Arbitrators either Party shall have specified or alluded to any report or document in its own exclusive possession without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Arbitrators, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Arbitrators may require.

ARTICLE V.

It shall be the duty of the agent of each Party, within two months after the expiration of the time limited for the delivery of the counter case on both sides, to deliver in duplicate to each of the said Arbitrators and to the agent of the other Party a written or printed argument showing the points and referring to the evidence upon which his Government relies; and the Arbitrators may, if they desire further elucidation with regard to any point, require a written or printed statement or argument, or oral argument by counsel upon it; but in such case the other Party shall be entitled to reply either orally or in writing as the case may be.

ARTICLE VI.

In deciding the matters submitted to the Arbitrators they shall be governed by the following three rules, which are agreed upon by the High Contracting Parties as rules to be taken as applicable to the case, and by such principles of International Law not inconsistent therewith as the Arbitrators shall determine to have been applicable to the case.

RULES.

A neutral Government is bound—

First, to use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

Thirdly, to exercise due diligence in its own ports and waters, and, as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties.

Her Britannic Majesty has commanded her High Commissioners and Plenipotentiaries to declare that Her Majesty's Government cannot assent to the foregoing rules as a statement of principles of International

Law which were in force at the time when the claims mentioned in Article I arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries and of making satisfactory provision for the future, agrees that in deciding the questions between the two countries arising out of those claims, the Arbitrators should assume that Her Majesty's Government had undertaken to act upon the principles set forth in these rules.

And the high contracting parties agree to observe these rules as between themselves in future, and to bring them to the knowledge of other maritime powers, and to invite them to accede to them.

ARTICLE VII.

The decision of the Tribunal shall, if possible, be made within three months from the close of the argument on both sides.

It shall be made in writing and dated, and shall be signed by the Arbitrators who may assent to it.

The said Tribunal shall first determine as to each vessel separately whether Great Britain has, by any act or omission, failed to fulfill any of the duties set forth in the foregoing three rules, or recognized by the principles of International Law not inconsistent with such rules, and shall certify such fact as to each of the said vessels. In case the Tribunal find that Great Britain has failed to fulfill any duty or duties as aforesaid, it may, if it think proper, proceed to award a sum in gross to be paid by Great Britain to the United States for all the claims referred to it; and in such case the gross sum so awarded shall be paid in coin by the Government of Great Britain to the Government of the United States, at Washington, within twelve months after the date of the award.

The award shall be in duplicate, one copy whereof shall be delivered to the agent of the United States for his Government, and the other copy shall be delivered to the agent of Great Britain for his Government.

ARTICLE VIII.

Each Government shall pay its own agent and provide for the proper remuneration of the counsel employed by it and of the Arbitrator appointed by it, and for the expense of preparing and submitting its case to the Tribunal. All other expenses connected with the arbitration shall be defrayed by the two Governments in equal moieties.

ARTICLE IX.

The Arbitrators shall keep an accurate record of their proceedings, and may appoint and employ the necessary officers to assist them.

ARTICLE X.

In case the Tribunal finds that Great Britain has failed to fulfill any duty or duties as aforesaid, and does not award a sum in gross, the High Contracting Parties agree that a Board of Assessors shall be appointed to ascertain and determine what claims are valid, and what amount or amounts shall be paid by Great Britain to the United States on account of the liability arising from such failure, as to each vessel, according to the extent of such liability as decided by the Arbitrators.

The Board of Assessors shall be constituted as follows: One member

thereof shall be named by the President of the United States, one member thereof shall be named by Her Britannic Majesty, and one member thereof shall be named by the Representative at Washington of His Majesty the King of Italy; and in case of a vacancy happening from any cause it shall be filled in the same manner in which the original appointment was made.

As soon as possible after such nominations the Board of Assessors shall be organized in Washington, with power to hold their sittings there, or in New York, or in Boston. The members thereof shall severally subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment and according to justice and equity, all matters submitted to them, and shall forthwith proceed, under such rules and regulations as they may prescribe, to the investigation of the claims which shall be presented to them by the Government of the United States, and shall examine and decide upon them in such order and manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the Governments of Great Britain and of the United States, respectively. They shall be bound to hear on each separate claim, if required, one person on behalf of each Government, as counsel or agent. A majority of the Assessors in each case shall be sufficient for a decision.

The decision of the Assessors shall be given upon each claim in writing, and shall be signed by them respectively and dated.

Every claim shall be presented to the Assessors within six months from the day of their first meeting, but they may, for good cause shown, extend the time for the presentation of any claim to a further period not exceeding three months.

The Assessors shall report to each Government, at or before the expiration of one year from the date of their first meeting, the amount of claims decided by them up to the date of such report; if further claims then remain undecided, they shall make a further report at or before the expiration of two years from the date of such first meeting; and in case any claims remain undetermined at that time, they shall make a final report within a further period of six months.

The report or reports shall be made in duplicate, and one copy thereof shall be delivered to the Secretary of State of the United States, and one copy thereof to the Representative of Her Britannic Majesty at Washington.

All sums of money which may be awarded under this Article shall be payable at Washington, in coin, within twelve months after the delivery of each report.

The Board of Assessors may employ such clerks as they shall think necessary.

The expenses of the Board of Assessors shall be borne equally by the two Governments, and paid from time to time, as may be found expedient, on the production of accounts certified by the Board. The remuneration of the Assessors shall also be paid by the two Governments in equal moieties in a similar manner.

ARTICLE XI.

The High Contracting Parties engage to consider the result of the proceedings of the Tribunal of Arbitration and of the Board of Assessors, should such Board be appointed, as a full, perfect, and final settlement of all the claims hereinbefore referred to; and further engage that every such claim, whether the same may or may not have been presented

to the notice of, made, preferred, or laid before the Tribunal or Board, shall, from and after the conclusion of the proceedings of the Tribunal or Board, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE XII.

The High Contracting Parties agree that all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of Her Britannic Majesty, arising out of acts committed against the persons or property of citizens of the United States during the period between the thirteenth of April, eighteen hundred and sixty-one, and the ninth of April, eighteen hundred and sixty-five, inclusive, not being claims growing out of the acts of the vessels referred to in Article I of this Treaty, and all claims, with the like exception, on the part of corporations, companies, or private individuals, subjects of Her Britannic Majesty, upon the Government of the United States, arising out of acts committed against the persons or property of subjects of Her Britannic Majesty during the same period, which may have been presented to either Government for its interposition with the other, and which yet remain unsettled, as well as any other such claims which may be presented within the time specified in Article XIV of this Treaty, shall be referred to three Commissioners, to be appointed in the following manner—that is to say: One Commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date of the exchange of the ratifications of this Treaty, then the third Commissioner shall be named by the Representative at Washington of His Majesty the King of Spain. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment; the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet at Washington at the earliest convenient period after they have been respectively named; and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide, to the best of their judgment, and according to justice and equity, all such claims as shall be laid before them on the part of the Governments of the United States and of Her Britannic Majesty, respectively; and such declaration shall be entered on the record of their proceedings.

ARTICLE XIII.

The Commissioners shall then forthwith proceed to the investigation of the claims which shall be presented to them. They shall investigate and decide such claims in such order and such manner as they may think proper, but upon such evidence or information only as shall be furnished by or on behalf of the respective Governments. They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of the respective Governments in support of, or in answer to, any claim, and to hear, if required, one person on each side, on behalf of each Government, as

counsel or agent for such Government, on each and every separate claim. A majority of the Commissioners shall be sufficient for an award in each case. The award shall be given upon each claim in writing, and shall be signed by the Commissioners assenting to it. It shall be competent for each Government to name one person to attend the Commissioners as its agent to present and support claims on its behalf, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof.

The High Contracting Parties hereby engage to consider the decision of the Commissioners as absolutely final and conclusive upon each claim decided upon by them, and to give full effect to such decisions without any objection, evasion, or delay whatsoever.

ARTICLE XIV.

Every claim shall be presented to the Commissioners within six months from the day of their first meeting, unless in any case where reasons for delay shall be established to the satisfaction of the Commissioners, and then, and in any such case, the period for presenting the claim may be extended by them to any time not exceeding three months longer.

The Commissioners shall be bound to examine and decide upon every claim within two years from the day of their first meeting. It shall be competent for the Commissioners to decide in each case whether any claim has or has not been duly made, preferred, and laid before them, either wholly or to any and what extent, according to the true intent and meaning of this Treaty.

ARTICLE XV.

All sums of money which may be awarded by the Commissioners on account of any claim shall be paid by the one Government to the other, as the case may be, within twelve months after the date of the final award, without interest, and without any deduction save as specified in Article XVI of this Treaty.

ARTICLE XVI.

The Commissioners shall keep an accurate record, and correct minutes or notes of all their proceedings, with the dates thereof, and may appoint and employ a secretary, and any other necessary officer or officers, to assist them in the transaction of the business which may come before them.

Each Government shall pay its own Commissioner and agent or counsel. All other expenses shall be defrayed by the two Governments in equal moieties.

The whole expenses of the Commission, including contingent expenses, shall be defrayed by a ratable deduction on the amount of the sums awarded by the Commissioners, provided always that such deduction shall not exceed the rate of five per cent. on the sums so awarded.

ARTICLE XVII.

The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full, perfect, and final settlement of all such claims as are mentioned in Article XII of this Treaty upon either

Government; and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.

ARTICLE XVIII.

It is agreed by the High Contracting Parties that, in addition to the liberty secured to the United States fishermen by the Convention between the United States and Great Britain, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American Colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the sea-coasts and shores, and in the bays, harbors, and creeks, of the Provinces of Quebec, Nova Scotia, and New Brunswick, and the Colony of Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land upon the said coasts and shores and islands, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with British fishermen, in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that the salmon and shad fisheries, and all other fisheries in rivers and the mouths of rivers are hereby reserved exclusively for British fishermen.

ARTICLE XIX.

It is agreed by the High Contracting Parties that British subjects shall have, in common with the citizens of the United States, the liberty, for the term of years mentioned in Article XXXIII of this Treaty, to take fish of every kind, except shell-fish, on the eastern sea-coasts and shores of the United States north of the thirty-ninth parallel of north latitude, and on the shores of the several islands thereunto adjacent, and in the bays, harbors, and creeks of the said sea-coasts and shores of the United States and of the said islands, without being restricted to any distance from the shore, with permission to land upon the said coasts of the United States and of the islands aforesaid, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the rights of private property, or with the fishermen of the United States in the peaceable use of any part of the said coasts in their occupancy for the same purpose.

It is understood that the above-mentioned liberty applies solely to the sea-fishery, and that salmon and shad fisheries, and all other fisheries in rivers and mouths of rivers are hereby reserved exclusively for fishermen of the United States.

ARTICLE XX.

It is agreed that the places designated by the Commissioners appointed under the first Article of the treaty between the United States and Great Britain, concluded at Washington on the 5th of June, 1854,

upon the coasts of Her Britannic Majesty's Dominions and the United States, as places reserved from the common right of fishing under that Treaty, shall be regarded as in like manner reserved from the common right of fishing under the preceding Articles. In case any question should arise between the Governments of the United States and of Her Britannic Majesty as to the common right of fishing in places not thus designated as reserved, it is agreed that a Commission shall be appointed to designate such places, and shall be constituted in the same manner, and have the same powers, duties, and authority as the Commission appointed under the said first Article of the Treaty of the 5th of June, 1854.

ARTICLE XXI.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, fish-oil and fish of all kinds, (except fish of the inland lakes, and of the rivers falling into them, and except fish preserved in oil,) being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country, respectively, free of duty.

ARTICLE XXII.

Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under Article XVIII of this Treaty are of greater value than those accorded by Articles XIX and XXI of this Treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of this Treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under Article XVIII of this Treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given.

ARTICLE XXIII.

The Commissioners referred to in the preceding Article shall be appointed in the following manner—that is to say: One Commissioner shall be named by the President of the United States, one by Her Britannic Majesty, and a third by the President of the United States and Her Britannic Majesty conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this article shall take effect, then the third Commissioner shall be named by the Representative at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

The Commissioners so named shall meet in the City of Halifax, in

the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

Each of the High Contracting Parties shall also name one person to attend the Commission as its agent, to represent it generally in all matters connected with the Commission.

ARTICLE XXIV.

The proceedings shall be conducted in such order as the Commissioners appointed under Articles XXII and XXIII of this Treaty shall determine. They shall be bound to receive such oral or written testimony as either Government may present. If either Party shall offer oral testimony, the other Party shall have the right of cross-examination, under such rules as the Commissioners shall prescribe.

If in the case submitted to the Commissioners either Party shall have specified or alluded to any report or document in its own exclusive possession, without annexing a copy, such Party shall be bound, if the other Party thinks proper to apply for it, to furnish that Party with a copy thereof; and either Party may call upon the other, through the Commissioners, to produce the originals or certified copies of any papers adduced as evidence, giving in each instance such reasonable notice as the Commissioners may require.

The case on either side shall be closed within a period of six months from the date of the organization of the Commission, and the Commissioners shall be requested to give their award as soon as possible thereafter. The aforesaid period of six months may be extended for three months in case of a vacancy occurring among the Commissioners under the circumstances contemplated in Article XXIII of this Treaty.

ARTICLE XXV.

The Commissioners shall keep an accurate record and correct minute or notes of all their proceedings, with the dates thereof, and may appoint and employ a secretary and any other necessary officer or officers to assist them in the transaction of the business which may come before them.

Each of the High Contracting Parties shall pay its own Commissioner and agent or counsel; all other expenses shall be defrayed by the two Governments in equal moieties.

ARTICLE XXVI.

The navigation of the river St. Lawrence, ascending and descending, from the forty-fifth parallel of north latitude, where it ceases to form the boundary between the two countries, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the citizens of the United States, subject to any laws and regulations of Great Britain, or of the Dominion of Canada, not inconsistent with such privilege of free navigation.

The navigation of the rivers Yukon, Porcupine, and Stikine, ascending and descending, from, to, and into the sea, shall forever remain free and open for the purposes of commerce to the subjects of Her Britannic

Majesty and to the citizens of the United States, subject to any laws and regulations of either country within its own territory, not inconsistent with such privilege of free navigation.

ARTICLE XXVII.

The Government of Her Britannic Majesty engages to urge upon the Government of the Dominion of Canada to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion on terms of equality with the inhabitants of the Dominion; and the Government of the United States engages that the subjects of Her Britannic Majesty shall enjoy the use of the St. Clair Flats Canal on terms of equality with the inhabitants of the United States; and further engages to urge upon the State Governments to secure to the subjects of Her Britannic Majesty the use of the several State canals connected with the navigation of the lakes or rivers traversed by or contiguous to the boundary-line between the possessions of the High Contracting Parties, on terms of equality with the inhabitants of the United States.

ARTICLE XXVIII.

The navigation of Lake Michigan shall also, for the term of years mentioned in Article XXXIII of this Treaty, be free and open for the purposes of commerce to the subjects of Her Britannic Majesty, subject to any laws and regulations of the United States or of the States bordering thereon not inconsistent with such privilege of free navigation.

ARTICLE XXIX.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, goods, wares, or merchandise arriving at the ports of New York, Boston, and Portland, and any other ports in the United States which have been or may from time to time be specially designated by the President of the United States, and destined for Her Britannic Majesty's Possessions in North America, may be entered at the proper custom-house and conveyed in transit, without the payment of duties, through the territory of the United States, under such rules, regulations, and conditions for the protection of the revenue as the Government of the United States may from time to time prescribe; and, under like rules, regulations, and conditions, goods, wares, or merchandise may be conveyed in transit, without the payment of duties, from such Possessions through the territory of the United States for export from the said ports of the United States.

It is further agreed that, for the like period, goods, wares, or merchandise arriving at any of the ports of Her Britannic Majesty's Possessions in North America and destined for the United States may be entered at the proper custom-house and conveyed in transit, without the payment of duties, through the said Possessions, under such rules and regulations, and conditions for the protection of the revenue, as the Governments of the said Possessions may from time to time prescribe; and, under like rules, regulations, and conditions, goods, wares, or merchandise may be conveyed in transit, without payment of duties, from the United States through the said Possessions to other places in the United States, or for export from ports in the said Possessions.

ARTICLE XXX.

It is agreed that, for the term of years mentioned in Article XXXIII of this Treaty, subjects of Her Britannic Majesty may carry in British vessels, without payment of duty, goods, wares, or merchandise from one port or place within the territory of the United States upon the St. Lawrence, the Great Lakes, and the rivers connecting the same, to another port or place within the territory of the United States as afore-said: Provided, That a portion of such transportation is made through the Dominion of Canada by land-carriage and in bond, under such rules and regulations as may be agreed upon between the Government of Her Britannic Majesty and the Government of the United States.

Citizens of the United States may for the like period carry in United States vessels, without payment of duty, goods, wares, or merchandise from one port or place within the possessions of Her Britannic Majesty in North America, to another port or place within said possessions: Provided, That a portion of such transportation is made through the territory of the United States by land-carriage and in bond, under such rules and regulations as may be agreed upon between the Government of the United States and the Government of her Britannic Majesty.

The Government of the United States further engages not to impose any export duties on goods, wares, or merchandise carried under this article through the territory of the United States; and Her Majesty's Government engages to urge the Parliament of the Dominion of Canada and the Legislatures of the other colonies not to impose any export duties on goods, wares, or merchandise carried under this article; and the Government of the United States may, in case such export duties are imposed by the Dominion of Canada, suspend, during the period that such duties are imposed, the right of carrying granted under this article in favor of the subjects of Her Britannic Majesty.

The Government of the United States may suspend the right of carrying granted in favor of the subjects of Her Britannic Majesty under this article, in case the Dominion of Canada should at any time deprive the citizens of the United States of the use of the canals in the said Dominion on terms of equality with the inhabitants of the Dominion, as provided in Article XXVII.

ARTICLE XXXI.

The Government of Her Britannic Majesty further engages to urge upon the Parliament of the Dominion of Canada and the Legislature of New Brunswick, that no export duty, or other duty, shall be levied on lumber or timber of any kind cut on that portion of the American territory in the State of Maine watered by the river St. John and its tributaries, and floated down that river to the sea, when the same is shipped to the United States from the Province of New Brunswick. And, in case any such export or other duty continues to be levied after the expiration of one year from the date of the exchange of the ratifications of this Treaty, it is agreed that the Government of the United States may suspend the right of carrying hereinbefore granted under Article XXX of this Treaty for such period as such export or other duty may be levied.

ARTICLE XXXII.

It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this Treaty, inclusive, shall extend to the Colony of

